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IN THE

SUPREME COURT OF THE UNITED STATES

No. 1022

OCTOBER, 1964, TERM

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, ET AL., Petitioners,

vs.

DEBORAH A. NORTHCROSS, ET AL., Respondents.

PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE, THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

Come the petitioners, the Board of Education of the Memphis City Schools and the members and superintendent of said Board, and file this, their petition for a Writ of Certiorari, and in support of said petition, respectfully show to the Court:

I. JURISDICTIONAL STATEMENT

A. This petition seeks a review of a decision of the United States Court of Appeals for the Sixth Circuit, styled "Northcross, et al., v. Board of Education of the City of Memphis, et al.", being Cause Number 14,642 in said Court. The opinion of the Court of Appeals is appended to this petition but is not yet officially reported. A petition to rehear was filed in said cause and there is likewise appended the opinion of the Court of Appeals on that petition.

B. The original opinion of the Court of Appeals was filed in the cause and judgment rendered in accordance therewith on March 23, 1962, and the Court last took action in the case on May 15, 1962 when a supplemental opinion making an additional finding of fact was filed.

On May 2, 1962, the Court of Appeals entered an order staying its mandate in this cause for thirty (30) days pending the filing of this petition for certiorari. An additional stay of fifteen (15) days was granted by the Court on May 29, 1962.

This suit involves the desegregation of the public school system of the city of Memphis, Tennessee. The respondents invoked the jurisdiction of the United States District Court by virtue of Section 1343(3), Title 28, U.S.C. and Section 1983 of Title 42, U.S.C. This Court may entertain jurisdiction of this petition under Section 1254(1), Title 28, U.S.C.

II. QUESTION PRESENTED FOR REVIEW

A. Petitioners had long prior to the filing of the suit in this cause made frequent public announcements that they intended to use the Tennessee Pupil Assignment Law as the plan for the desegregation of the Memphis public school system. Petitioners had personally advised the respondents and their local counsel of petitioners' intention in that respect. The District Court approved the Tennessee Pupil Assignment Law as the plan of desegration. *Said law was in fact effectively and successfully used by the parties as the vehicle for effecting the desegregation of the Memphis Public School System for the school year commencing September* 1, 1961. (Affidavit of William D. Galbreath, appendix, page 45)

The first question presented for review may thus be stated:

Under the facts of the case at bar, may the Tennessee Pupil Assignment Law, administered constitutionally and in good faith, serve as a method or plan for the desegregation of the Memphis public school system?

B. Paragraph VIII of respondents' complaint filed in the District Court concedes that no effort had been made "to exhaust the administrative remedy provided by the Tennessee Pupil Assignment Law." (Appendix, Page 5) The record shows, however, that the first time the administrative remedy afforded by that law was initiated by respondents or members of the class represented by them, relief was promptly and effectively afforded them on a racially nondiscriminatory basis.

The second question presented may be stated thusly:

Are respondents obligated to exhaust the administrative remedy afforded them under the Tennessee Pupil Assignment Law before seeking judicial relief . . . especially where the administrative remedy has already in fact served to accomplish the purpose sought by respondents' complaint?

III. THE STATUTES INVOLVED

Respondents complaint was filed pursuant to the provisions of Section 1343(3) of Title 28, U.S.C., and Section 1983 of Title 42, U.S.C. These sections provide:

"1343. Civil rights and elective franchise.

The district courts shall have original jurisdiction

of any civil action authorized by law to be commenced by any person:

. . . . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

1983. **Civil action for deprivation of rights.**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In a consideration of this petition the Court will be concerned with the Tennessee Pupil Assignment Law. That law appears as Sections 49-1741 through 49-1763 of the Tennessee Code Annotated and may be found at page 64 of the Cumulative Supplement to Volume 9 of that Code. The law is quite lengthy and is quoted in its entirety beginning at page 298a of the Certified Record on Petition for Writ of Certiorari filed in this cause. It is also quoted in the appendix to this petition, beginning at page 76.

IV. STATEMENT OF THE CASE

This Petition for Writ of Certiorari seeks to have the Supreme Court review a decision of the United States Court of Appeals for the Sixth Circuit.

A. The Pleadings and Proceedings in the District Court.

Respondents filed their complaint seeking an order enjoining the petitioners from operating a compulsory biracial school system or, in the alternative, for an order directing petitioners to submit a plan for the re-organization of the schools on a unitary non-racial basis. Respondents' complaint alleged:

> "... that the defendants maintain and operate a compulsory biracial school system in the City of Memphis, in which certain schools are designated for Negro students only and staffed by Negro personnel, and certain other schools are designated for white students only and staffed by white personnel. It is further alleged that this is separate geographical zoning for the Negro and white schools and that these zones in some instances overlap so that both Negro and white students are in the same zone. The plaintiffs also allege that they have not exhausted their remedies under the Tennessee Pupil Assignment Law for the reason that it does not provide an adequate remedy for the relief they seek." (Opinion of Court of Appeals, Appendix P. 50)

In their answer to the complaint petitioners denied that they operated a compulsory bi-racial school system. They conceded that there was at that time no racial integration of their schools for the reason that there had never been

an application by a member of one race to attend a school theretofore attended by members of another race; that it would be impractical and impossible for the Board of Education arbitrarily to pick here and there certain school children and assign them to another school, that is to say, for the Board of Education to coercively assign a child of one race against his will to a school attended by members of another race would constitute nothing less than compulsory integration; and that on February 8, 1960, prior to the filing of suit respondents had been advised that application to enroll their children in any school of their choice would be considered by the Board of Education in good faith and in accordance with law. (Appendix P. 14)

The petitioners also answered that the Tennessee Pupil Assignment Law afforded both respondents and petitioners a plan for the desegregation of the school system and that the respondents were obligated to initiate and pursue the administrative remedy afforded by that Assignment Law before seeking judicial relief.

Judge Cecil's opinion in the Court of Appeals well states the decision of the District Court:

> "A trial was had in the District Court upon the issues presented by the pleadings, after which the District Judge made findings of fact and conclusions of law and entered judgment on May 2, 1961.
>
> The trail judge found as facts, that the defendants do not operate a compulsory biracial school system or maintain a dual schedule or pattern of school zone lines based upon race or color; that the school zone maps introduced in evidence have no significance as evidence

of a biracial school system; that the Tennessee Pupil Assignment Law furnishes the plaintiffs an effective and adequate remedy for integration and as effective a plan for compliance with the decisions of the Supreme Court of the United States as the Court could devise; that the defendants' intention to effect integration of the school system under the Pupil Assignment Act has been open and generally known to the public and that the plaintiffs and their attorneys were so advised at a public meeting of the Board of Education on February 6, 1960; that the Board has evidenced all good faith to the public and to the court of its intention to comply with the decision of the Supreme Court.

By judgment entry the court sustained the plaintiffs' prayer for alternative relief by approving the Tennessee Pupil Assignment Law as a plan for desegregation and denied further relief to the plaintiffs for the reason that the defendants did not operate a biracial school system and the plaintiffs had not exhausted their administrative remedies under the Assignment Law." (Appendix P. 51)

B. The Desegregation of the Schools Under the Plan.

Respondents appealed the District Court's decision to the Court of Appeals. In September, 1961, several months before the argument of the cause in that Court, some of the members of the class upon whose behalf respondents had filed suit applied for admission and were enrolled in schools that had theretofore been attended solely by members of another race. In considering this event the Court should be advised that with one possible exception this was the first time that such an application had been made. That is to say this

was the first time that the Board of Education had been given the opportunity of desegregating its school system under the plan afforded by the Tennessee Pupil Assignment Law or any other plan or law.

Thirty-six (36) Negro first grade pupils made application to transfer to schools that had previously been attended only by white students; two (2) Negro first grade students made application to attend schools theretofore attended by Negro pupils; and four (4) white first grade pupils made application to transfer to other white schools. Only one racial transfer was involved in the numerous transfer applications in the remaining grades of the school system.

The processing of all of these transfer applications was begun under the Tennessee Pupil Assignment Law, and with respect to the thirty-six so-called "racial applications" thirteen (13) children were assigned to attend four (4) previously white schools. We shall not belabor the matter further except to respectfully refer the Court to the affidavit of Mr. W. D. Galbreath, President of the Board of Education, which appears on page 45 of the appendix to this petition. Suffice it to say that local counsel for respondents in this cause who devoted much time, effort and planning to the events, described the Assignment Law and the application of that law by the parties in the case at bar as the most effective "plan of desegregation" that they had ever experienced and their experience in the broad spectrum of Civil Rights litigation is rather substantial.

The desegregation of the Memphis schools should be considered in the light of petitioners' announcements made prior to the filing of this suit, as to the manner in which they desired to effect the transition. The Board's attitude

appears in the Findings and Conclusions of the District Court and it was there stated:

> "VIII. The defendants' intention to effect the integration of their school system under the Pupil Assignment Act has not been a secret but has been generally known to the public, including the plaintiffs in this case for quite some time; that the operation of the school system under the law has been made known by the Board of Education to the members of its staff and the principals of its schools; and that at a public meeting of the Board of Education held on February 6, 1960, each of the plaintiffs and their counsel were advised in clear and unequivocal terms that applications by its Negro patrons for the assignment or transfer of a Negro child to a school heretofore attended solely by white children would be duly considered and acted upon by the Board of Education under the Pupil Assignment Law without regard to the race or color of the applicant.
>
> IX. That the Board of Education at said meeting of February 6, 1960, and on other public occasions, as well as in the sworn testimony of the members of said Board appearing in Court, has evidenced all good faith to this Court of its intention to comply with the decision of the United States Supreme Court and in all good faith to consider applications for transfer without regard to race. The Court finds, therefore, that plaintiffs' fears that the law will be administered adversely to them are totally unfounded. The attitude of the plaintiffs toward the Pupil Assignment Law is based, not upon experience or upon what is shown to have occurred, but rather

upon what plaintiffs seem to fear will occur. Such attitude is totally unprincipled." (Appendix, Page 34)

V. ARGUMENT

A. Under the facts of the case at bar, may the Tennessee Pupil Assignment Law, administered constitutionally and in good faith, serve as a method or plan for the desegregation of the Memphis public school system?

The answer to this question necessarily involves an analysis and perhaps an elucidation of the decision in **Shuttlesworth v. Board of Education**, 162 F. Supp. 372, affirmed 358 U. S. 101, 3 Law Ed. (2) 145, 79 S. Ct. 221. The Shuttlesworth decision is important for two reasons. First, the District Court discussed in great detail the operation of assignment or placement laws. The Court noted that such laws had been successfully used in other jurisdictions to effect school desegregation. And it was held that these laws furnish "the legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to race or color". The factual situation in the case at bar, the successful desegregation of the Memphis schools under the assignment law, furnishes only one other example of the effective use of such laws as a plan of desegregation.

Secondly, the Shuttlesworth case is important for the reason that it is the only instance where this Court has had before it for consideration a state assignment law. In all other cases involving assignment laws the Court has denied certiorari.

This Court's opinion in Shuttlesworth was very short and we quote that opinion in full:

> *"The motion to affirm is granted and the judgment is affirmed upon the limited grounds on which the District Court rested its decision.* 162 *F. Supp.* 372, 384."

1. The District Court's Decision in Shuttlesworth.

Since the affirmance by this Court was upon limited grounds it is necessary to consider precisely the holding of the District Court. That ruling appears at page 384 of 162 F. Supp.:

> *"All that has been said in this present opinion must be limited to the constitutionality of the law upon its face. The School Placement Law furnished the legal machinery for an orderly administration of the public schools in a constitutional manner in the admission of qualified pupils upon a basis of individual merit without regard to their race or color. We must presume that it will be so administered.* If not, in some future proceeding it is possible that it may be declared unconstitutional in its application. The responsibility rests primarily upon the local school boards, but ultimately upon all of the people of the State."

Quoting further from the District Court, we find this statement:

> "It is possible for the Act to be applied so as to admit qualified Negro pupils to non-segregated schools. Upon oral argument counsel for both sides expressed their understanding that the North Carolina Pupil En-

rollment Act was actually being so applied. We cannot say, in advance of its application, that the Alabama Law will not be properly and constitutionally administered." (162 F. Supp. 381).

In considering this statement we again respectfully suggest that in Memphis the assignment law has been applied to desegregate the schools. Such application produced the best or most effective "plan of desegregation" that respondents' counsel had ever experienced.

Finally, in holding that a placement or assignment law furnishes the vehicle for "good faith implementation of the governing constitutional principles" in school cases, the District Court in the Shuttlesworth case said:

> "... The legal situation in Alabama is more analogous to that in North Carolina, where the Pupil Enrollment Act was ruled to be not unconstitutional on its face in an opinion by the late great Chief Judge Parker, from which we quote:
>
> 'Somebody must enroll the pupils in the schools. They cannot enroll themselves; and we can think of no one better qualified to undertake the task than the officials of the schools and the school boards having the schools in charge. It is to be presumed that these will obey the law, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration. As said by the Supreme Court in Brown v. Board of Education, 349 U. S. 294, 299, 75 S. Ct. 753, 756, 99 L. Ed. 1083:

> "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." Carson v. Warlick, 4th Cir. 1956, 238 F. (2d) 724, 728."

The very heart of Shuttlesworth is that school placement laws furnish the constitutional legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or color.

2. The Court of Appeals Did Not Cite Shuttlesworth

Shuttlesworth presents the only instance in which this Court has commented upon or considered pupil assignment laws. Petitioners' position in the Court of Appeals, both in Brief and in oral argument was basically grounded upon Shuttlesworth. The District Court relied on Shuttlesworth in making its decision. One would conclude that these factors would prompt the Court of Appeals to comment on that case and rule that the case has no application or can be distinguished from the case at bar. Neither the original opinion of the Court of Appeals nor the opinion on the petition to rehear contains a single reference to Shuttlesworth.

That decision either has a role in the field of school desegregation or it is a nullity. If it has a role, then the Court of Appeals is obligated to recognize that role and give it effect. If the decision is to be nullified, then this Court should do so. Whether the holding in Shuttlesworth is to be

followed or nullified, the decision of this Court in that case should not be ignored.

It is petitioners' position that Shuttlesworth approves an assignment law as a plan of desegregation in those situations, as in the case at bar, where the school system has applied such law in good faith and desegregated its schools. Numerous school systems have used an assignment or placement law as their plan or method of effectuating a transition to a racially non discriminatory school system. Those systems and petitioners are entitled to a construction of Shuttlesworth by this Court as to the validity of their plan.

3. A Conflict with the Eighth Circuit.

Dove v. Parham (1959) 271 F. (2d) 132, C. A.8, involved the desegregation of the schools at Dollarway, Arkansas. A detailed history of that litigation appears in an introductory note in 5 Race Relations Law Reporter, Volume 1, at page 43. The District Court had upheld the constitutionality of the Arkansas Pupil Placement Law and had ordered the immediate admission of three Negro students.

The Eighth Circuit Court of Appeals affirmed the District Court on the constitutional issue but reversed that part of the decision directing the admission of three students on the ground that the students had not exhausted the administrative remedy afforded them by the placement law. In discussing the role of assignment or placement laws, Judge Johnsen stated:

> "In this field of constitutional paramountcy, a placement or assignment statute is entitled to be accorded recognition only as an implement or adjunctive element on the part of a state for effecting an orderly

solution to its desegregation difficulties, in proper relationship to its other school-system problems, but with a subservience to the supreme-law declaration of the Brown cases as to all imposed segregation and the obligation owed to get rid thereof within the tolerance entitled to be allowed play under these decisions for accomplishing that result.

But there is no need here to extend further these generalized observations. Reverting to the facial constitutionality of the Placement Act, it follows that the plaintiffs are without any general public school right under Arkansas law to seek admission to a particular school, except on the basis of and in accordance with the provisions of that Act. While their federal constitutional rights have been previously violated in that they have been required to attend a school segregated under administrative authority, the Placement Act provides a means for them now to seek admission to the school which they think they are otherwise entitled to attend and, insofar as the provisions of the Act are concerned, have their right to do so determined without regard to their race or color."

It is respectfully submitted, therefore, that the decision of the Court of Appeals in the instant case gave no consideration or effect to this Court's decision in Shuttlesworth and that the decision conflicts with a decision of the Eighth Circuit.

4. The Proven Effectiveness *of the Plan.*

The District Court signed the judgment in the case at bar on May 2, 1961. In his earlier opinion from the bench the Court urged that the parties try the plan afforded by

the assignment law. (Appendix, Page 29). The plan was tried on August 28, 1961, the first school registration following the entry of the judgment, and four schools were desegregated without incident or turmoil. We had no mob violence nor dynamited schools.

This Court, perhaps better than any other appellate court in the land, recognizes the emotionalism that is generated in this field. No single aspect of human relations is as susceptible to discussion and controversy or presents the opportunity for demonstrations of good will and ill will as is the area in which this case falls. Each community has a different attitude toward school desegregation. Of all communities that have thus far met this problem, Memphis, because of its geographical location and evenly distributed racial balance, is perhaps the one that would be looked upon to generate the greatest amount of unrest and controversy.

To the everlasting credit of the community the exact reverse resulted. Controversy there was, but that controversy was almost completely erased by a deeper spirit of good faith, respect for law and order, and obedience to the decisions of the federal courts.

Immediately one looks for a reason for this accomplishment and, of course, there is no single reason. It might be said that there are as many reasons as there are people in the community. It might better be said that the cooperation which petitioners received from every local public official, from all of the patrons of the school system, both white and Negro, and from every form of news media was the reason.

This Court has said in the second Brown case:

"Full implementation of these constitutional princi-

ples may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. *Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.*"

And the case at bar proves the wisdom of that pronouncement. The District Judge's complete familiarity with local attitudes and conditions, his knowledge of the people residing within his district and their respect for him lead to the successful transition to a desegregated school system.

We have heretofore referred to the statements of respondents' local counsel concerning the effectiveness of the Tennessee Pupil Assignment Law as Memphis' plan of desegregation. The plan was not only satisfactory to respondents' counsel, but it was satisfactory to the great bulk of the population. In fact, it might best be described as a community plan with almost every element in the community working for its success. That success has prompted at least one city, Jackson, Tennessee, to desegregate its school system without litigation and other school officials are investigating the method which Memphis used.

We recognize that this Court is, perhaps, overburdened with petitions seeking the Court's review of litigants' rights. In view of this, the Board of Education seriously considered the advisability of further burdening the Court with the

petition. It was concluded that the welfare of the community, the splendid results achieved under the plan, and the absence of turmoil and strife in this transition merited the filing of this petition with the hope of preserving a plan that met with such wide acceptance. Petitioners sincerely feel that the plan of desegregation approved by the District Court and put into operation by the parties themselves has met with substantial success, has avoided an unfavorable public spotlight for our city, state and nation, and of at least equal importance, this plan has protected the constitutional rights of the parties.

It is impossible for one to ignore realities. We have experienced this plan and it has proved to be successful. We know that it has been accepted as a workable plan by every element of the community. Certainly no plan will endure forever and there will be revisions and modifications as our experience grows, but when desegregation in Memphis is accomplished without strife and vindictiveness under the plan of the assignment law, we feel that we are entitled to use that plan for a few more years. If further experience shows that modification, revision or acceleration of the plan is necessary, the doors of the Court are always open.

We most respectfully urge, therefore, that this Court entertain this petition for a writ of certiorari; that the Court clarify or explain its decision in Shuttlesworth; that the Court approve the plan of desegregation provided by the assignment law as that plan was adopted and used in the Memphis school system; and that the decision of the Court of Appeals be reversed.

B. Are respondents obligated to exhaust the administrative remedy afforded them under the Tennessee Pupil Assignment Law before seeking judicial relief . . . especially where the administrative remedy has already in fact served to accomplish the purpose sought by respondents' complaint?

The pleadings in the District Court which are quoted in full in the appendix fix this issue. Paragraph VIII of respondents' complaint acknowledges that the administrative remedy afforded by the Tennessee Pupil Assignment Law has not been exhausted. Paragraph VIII of petitioners' answer goes further and points out that the administrative remedy has not been initiated.

The law with respect to this question has been before the several Courts of Appeal on frequent occasions and the decisions of these Courts are in direct conflict. Five cases from the Fourth Circuit and one case from the Eighth Circuit answer the question in the affirmative, while two cases from the Fifth Circuit and one case from the Sixth Circuit, that being the case at bar, answer the question in the negative. It is suggested that this uncertainty and confusion should be removed in this important field.

1. The Rule Stated and Applied.

The general rule of law requiring the exhaustion of administrative remedies before seeking judicial relief is so well established that it would unnecessarily lengthen this petition to give its history. We shall limit our discussion to those cases dealing in the field of school segregation. The first of these cases is **Carson v. Board of Education** (1955) 227 F. (2) 789, C. A. 4. In the Carson case the North Carolina legislature enacted a Pupil Placement Law after the

trial of the case in the District Court and before the decision in the Court of Appeals. In commenting on the effect of such legislation, Judges Parker, Soper and Dobie in a *per curiam* opinion held:

> "In further consideration of the case, however, the District Judge should give consideration not merely to the decision of the Supreme Court but also to subsequent legislation of the State of North Carolina providing an administrative remedy for persons who feel agrieved with respect to their enrollment in the public schools of the state. The Act of March 30, 1955, entitled "An Act to Provide for the Enrollment of Pupils in Public Schools", being chapter 366 of the Public Laws of North Carolina of the Session of 1955, provides for enrollment by the county and city boards of education of school children applying for admission to schools, and authorizes the boards to adopt rules and regulations with regard thereto. It further provides for application to and prompt hearing by the board in the case of any child whose admission to any public school within the county or city administrative unit has been denied, with right of appeal therefrom to the superior Court of the county and thence to the Supreme Court of the state. An administrative remedy is thus provided by state law for persons who feel that they have not been assigned to the schools that they are entitled to attend; and it is well settled that the courts of the United States will not grant injunctive relief until administrative remedies have been exhausted. Myers v. Bethlehem Corp. 303 U.S. 41, 51; Natural Gas Co. v. Slattery, 302 U.S. 300, 310-311; Hageman Farms Corp. v. Baldwin 293 U.S. 163, 172; United States v. Illinois Central R. Co. 291 U.S. 457,

463, Peterson v. Bryan 290 U.S. 570; 575; Porter v. Investor's Syndicate 286 U.S. 461; Matthews v. Rogers 284 U.S. 521, 525-526; Prewitt v. A.C.L.R. Co. 211 U.S. 210.

This rule is especially applicable to a case such as this, where injunction is asked against state or county officers with respect to the control of schools maintained and supported by the state. The federal courts manifestly cannot operate the schools. All that they have the power to do in the premises is to enjoin violation of constitutional rights in the operation of schools by state authorities. Where the State law provides adequate administrative procedure for the protection of such rights, the federal courts manifestly should not interfere with the operation of the schools until such administrative procedure has been exhausted and the intervention of the federal courts is shown to be necessary. As said by Mr. Justice Stone in Matthews v. Rogers, supra, (284 U.S. 525): 'The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it.' Interference by injunction with the schools of a state is as grave a matter as interfering with its fiscal operations and should not be resorted to 'where the asserted federal right may be preserved without it.'"

(a) *The Rule Applied by the Fourth Circuit.*

Carson v. Board of Education was again before the Fourth Circuit Court of Appeals in this suit styled **Carson**

v. Warlick (1956) 238 F. (2d) 724, cert. denied, 353 U. S. 910, 77 S. Ct. 665, 1 L. Ed. (2d) 644. That suit sought a Writ of Mandamus requiring the District Judge to vacate his order staying further proceedings in the case until the plaintiffs had exhausted the administrative remedies afforded by the Placement Act. The applicants for the writ contended that the Pupil Placement Law was unconstitutional and that the trial should proceed in the court below "as though the pupil placement act had never been enacted".

The Court of Appeals denied the writ of mandamus and required that the administrative remedy afforded by the State law should be exhausted. After discussing the facial constitutionality of the assignment law, Judge Parker stated:

> Somebody must enroll the pupils in the schools. They cannot enroll themselves; and we can think of no one better qualified to undertake the task than the officials of the schools and the school boards having the schools in charge. It is to be presumed that these will obey the law, observe the standards prescribed by the legislature, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration. As said by the Supreme Court in Brown et al v. Board of Education et al, 349 U. S. 294, 299:
>
> > School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith

implementation of the governing constitutional principles."

It is argued that the statute does not provide an adequate administrative remedy because it is said that it provides for appeals to the Superior and Supreme Courts of the State and that these will consume so much time that the proceedings for admission to a school term will become moot before they can be completed. It is, clear, however, that the appeals to the courts which the statute provides are judicial, not administrative remedies and that, after administrative remedies before the school boards have been exhausted, judicial remedies for denial of constitutional rights may be pursued at once in the federal courts without pursuing state court remedies. Lane v. Wilson, 307 U.S. 268, 274. Furthermore, if administrative remedies before a school board have been exhausted, relief may be sought in the federal courts on the basis laid therefor by application to the board, notwithstanding time that may have elapsed while such application was pending. Applicants here are not entitled to relief because of failure to exhaust what are unquestionably administrative remedies before the Board.

There is no question as to the right of these school children to be admitted to the schools of North Carolina without discrimination on the grounds of race. They are admitted, however, as individuals, not as a class or group; and it is as individuals that their rights under the Constitution are asserted. Henderson v. United States, 339 U.S. 816, 824. It is the state school authorities who must pass in the first instance on their right to be admitted to any particular school and the

> Supreme Court of North Carolina has ruled that in the performance of this duty the school board must pass upon individual applications made individually to the board. The federal courts should not condone dilatory tactics or evasion on the part of state officials in according to citizens of the United States their rights under the Constitution, whether with respect to school attendance or any other matter; but it is for the state to prescribe the administrative procedure to be followed as long as this does not violate constitutional requirements, and we see no such violation in the procedure here required. We are dealing here, of course, with the administrative procedure of the state and not with the right of persons who have exhausted administrative remedies to maintain class actions in the federal courts in behalf of themselves and others qualified to maintain such actions.

That rule has been reaffirmed in **Covington v. Edwards**, 264 F. (2d) 780, C. A. 4; **Holt v. Raleigh City Board of Education**, 265 F. (2d) 95, cert. denied 361 U. S. 818, 4 L. Ed. (2d) 63, 80 S. Ct. 59; **Hood v. Board of Trustees of Sumter County**, 232 F. (2d) 626, C. A. 4, cert. denied 352 U. S. 870; 1 L. Ed. (2d) 76; 1 L. Ed. (2d) 76; 77 S. Ct. 95 and 286 F. (2d) 236; **McCoy v. Greensborough City Board of Education**, 283 F. (2d) 667.

(b) *The Rule Applied by the Eighth Circuit.*

The Eighth Circuit was presented with this question in **Dove v. Parham**, 271 F. (2d) 132. In the case at bar the contentions made by respondents paralled almost exactly the contentions made by the plaintiffs in the Dove case. Thus, we will quote at length from that case beginning at page 137 of 271 F. (2d):

But there is no need here to extend further these generalized observations. Reverting to the facial constitutionality of the Placement Act, it follows that the plaintiffs are without any general public school right under Arkansas law to seek admission to a particular school, except on the basis of and in accordance with the provisions of that Act. While their federal constitutional rights have been previously violated in that they have been required to attend a school segregated under administrative authority, the Placement Act provides a means for them now to seek admission to the school which they think they are otherwise entitled to attend, and, insofar as the provisions of the Act are concerned, have their right to be so determined without regard to their race or color.

* * * * * *

The plaintiffs here have given no recognition to these administrative provisions and requirements, as they existed under either the 1956 or the 1959 act. All that they did in respect thereto was to make oral request, through their parents, of the Superintendent of Schools, to be permitted to enroll in the school to which they sought admittance. The Superintendent refused this request and told them that they would have to enroll in the school (all Negro) which they had previously attended. The parents filed no written request with the Board for assignment or transfer and for a hearing, and there has never been any Board action under the statute with respect to the situation. The plaintiffs have contended for purposes of this suit, both in the trial court and here, that they were not required to resort to the procedure of the Act for

having the School Board pass upon the question of their right to be transferred and to be enrolled in the school to which they sought admittance, because to do so would have been futile in the situation, and that they thus were entitled to be regarded as having constructively exhausted their administrative remedies under the Act.

* * * * *

It is true that the several schools of the District had been continued to be operated with racial enrollments only. The defendants asserted that this situation had obtained because request in accordance with the statute had never been made to the Board, under the provisions of either the 1956 or the 1959 Act, for reassignment or transfer to another school by anyone. Their position, both in the trial court and here, is summarized by their counsel as follows: 'They (the Board) have continued to operate the schools just as they did before 1954, with one vital exception. They are now bound by law, and sincerely recognized that they are so bound, to make assignments without discrimination because of race.

* * * * *

The lack of any affirmative plan or action to disestablish the segregation status which had unconstitutionally been set up in the District, other than as the Board might be called upon to deal under the provisions of the 1956 or the 1959 Act with some individual application for assignment to another school, would perhaps not measure up to the legal and moral responsibility resting on a Board under the expression

and holding of the Brown cases. But we do not think that it is judicially wise or necessary to impatiently declare that desegregation should on this account be sought to be achieved, without regard to the overall pattern which the District is entitled to create through a constitutional application of the Placement Act, by assuming to excuse some individual student from the requirements of the assignment or placement statute. It must be recognized that the plaintiffs have not been without opportunity, since 1956, to request assignment or transfer on the basis of legislative nonracial scheme, and to have any unconstitutional application of that legislative scheme attempted to be made against them righted by the federal courts.

* * * * *

The statute makes of the Board the equivalent of an administrative tribunal, with the power and duty of engaging in adjudicatory function, including the consideration of the possibility of constitutional violation in relation to its result. No more than in the case of any other administrative agency, or of a court, does it seem to us that there can properly be recognized an anticipatory right to brand such a proceeding before the Board, in its official responsibility for administration of the statute, as being legally futile and so unnecessary. Even the important problem of school desegregation cannot soundly permit of such a departure from established legal concept and fundamental principle.

It is for this reason that we think there is controlling here, and that we adopt, what was said in Carson v. Board of Education, 4 Cir., 227 F (2d) 789, 790: 'Where

the state law provides adequate administrative procedure for the protection of such rights, the federal courts manifestly should not interfere with the operation of the schools until such administrative procedure has been exhausted and the intervention of the federal courts is shown to be necessary.'

In a subsequent case, Carson v. Warlick, 4 Cir., 238 F. (2d) 724, certiorari denied 353 U. S. 910, 77 S. Ct. 665, 1 L. Ed. 2d) 664, the court in an opinion by the late Chief Judge John J. Parker, made reiteration of this judicial limitation, holding that the plaintiffs there were not entitled to seek judicial relief, 'for the reason that it nowhere appears that they have exhausted their administrative remedies under the North Carolina Pupil Enrollment Act, and are not entitled to the relief which they seek in the court below until these administrative remedies have been exhausted.' At page 727 of 238 F. (2d). See also Holt v. Raleigh City Board of Education, 4 Cir., 265 F. (2d) 95, 98." (Op. p. 137, et seq.)

(c). *"Decisions" of the Fifth Circuit.*

The Fifth Circuit has considered this question in two cases. **Gibson v. Board of Public Instruction of Dade County,** 246 F. (2d) 913 and 272 F. (2d) 763, was before the Court on two occasions. The other decision from the Fifth Circuit is **Mannings v. Board of Public Instruction of Hillsborough County,** 277 F. (2d) 370, C. A. 5. The two opinions in the Gibson case state quite well the reason which all must concede would support such a decision and that reason appears in the statement of policy issued by the Dade County School Board:

"It is deemed by the Board that the best interest of the pupils and the orderly and efficient administration of the school system can best be preserved if the registration and attendance of pupils entering school commencing the current school term remains unchanged. Therefore, the Superintendent, principals and all other personnel concerned are herewith advised that until further notice the free public school system of Dade County will continue to be operated, maintained and *conducted on a non-integrated basis.*"

For the plaintiffs in the Gilson case to have sought application for admission to a non-segregated school would have been fruitless in view of the announced decision by the Board that it intended to operate the school system on a non-integrated basis. It seems apparent that the plea by the Dade County School Board that the administrative remedy had not been exhausted was only for dilatory purposes since no relief could have been accorded plaintiffs under that law in view of the announced policy of that Board.

But compare the case at bar. The Board of Education of the Memphis City Schools had made public announcements of its desire to use the state assignment law as the vehicle for effecting desegregation. Specifically, the Board had advised respondents that the law would be applied on a racially non-discriminatory basis. Of prime importance, however, is the fact that the schools of Memphis were desegregated the first time the respondents gave petitioners that opportunity.

(d). *The Decision in the Sixth Circuit.*

With respect to this question in the case at bar, Judge Cecil stated:

> "We do not discuss exhaustion of remedies under the statute for the reason that we hold the Pupil-Assign-Law is not adequate as a plan for reorganizing the schools into a non-racial system. Kelly v. Board of Education of City of Nashville, 159 F. Supp. 272, 277, D.C.M.D. Tenn.; Gibson v. Board of Public Instruction of Dade County, Florida, 246 F. (2d) 913, C. A. 5." (Appendix, Page 62).

The Tennessee Pupil Assignment Law is for all practical purposes identical to the North Carolina and South Carolina laws considered by the Fourth Circuit in **Carson v. Board of Education,** supra, **Carson v. Warlick**, supra, **Holt v. Raleigh City Board,** supra, **Hood v. Board of Trustees of Sumter County School District** and **McCoy v. Greensborough City Board of Education,** supra. It is also identical to the placement law considered by the Eighth Circuit in **Dove v. Parham,** supra.

From a purely legal standpoint the remedy was found to be adequate in the Warlick case, supra. From the practical application of the law in Memphis it was found to be not only adequate but superbly suited to accomplish the transition. No more severe test could have been given to the law.

As has been stated many times, the Federal Courts should not be onerated with the burden of operating a public school system. Indeed it has been said they have no right to do so. It is the function of the Federal Courts to prevent the deprivation of Federal constitutional rights in the operation of state supported schools and this Court has heretofore fixed the guiding principle that no person shall be denied the right to attend the school of his choice on account of

race. That principle has furnished a solution in only a part of the field. As heretofore stated, confusion now exists in the means and methods that the several states will use to conform to Federal law. Such confusion has no place in this field. Either the Fourth and Eighth Circuits are correct, or the Fifth and Sixth Circuits are correct. This Court should give the states direction so that this uncertainty will be removed.

We respectfully urge that a solution of this second question in accordance with the wise and perceptive decision by the Circuit Court of Appeals for the Fourth Circuit in **Carson v. Warlick,** appearing on page 20 of this petition, will serve (1) to preserve the daily administration and operation of state and local public schools to those institutions to whom such rights and duties belong, the respective state and local Boards of Education and (2) to preserve to the Federal judiciary its proper function in the field of state and local school administration, which is to exercise Federal jurisdiction to protect constitutional rights of pupils and patrons of public schools when school officials and administrative remedies under state and local law have failed, refused or neglected to do so.

CONCLUSION

The Board of Education of the Memphis City Schools does not desire to litigate. It much prefers to devote its time and efforts to educate. It has diverted a part of its efforts from its primary function because it deeply and sincerely feels that its method of meeting this problem conforms, at least for the present, to the mandate of this Court in the Brown cases. It believes that the method which it selected and has in operation is sanctioned by this

Court in the Shuttlesworth case. It knows that this method satisfies almost every single element of this community.

We most respectfully ask that this Court grant this petition, resolve the conflicts between the several Circuits and, upon a full consideration of the case, permit the continued desegregation of the Memphis schools under the plan that has proved so successful in this community.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED

NO. 1022

SUPREME COURT OF THE UNITED STATES

October Term 1961

The Board of Education of The City of Memphis, et al.,

Petitioners,

vs.

Deborah A. Northcross, et al.,

Respondents.

APPENDIX

To

PETITION FOR WRIT OF CERTIORARI

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In the

United States District Court

In and for the Western District of Tennessee

Memphis Division

Deborah A. Northcross, *et al.*,

Plaintiffs,

—v.—

The Board of Education of the City of Memphis, *et al.*,

Defendants.

Complaint

I

The jurisdiction of this court is invoked pursuant to the provisions of Title 28, United States Code, §1343(3), this being a suit in equity authorized by law. Title 42, United States Code, §1983, to be brought to redress the deprivation under color of law, statute, regulation, custom and usage of a estate of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought to be secured in this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution as hereinafter more fully appears.

II

This is a proceeding for a permanent injunction enjoining defendants from continuing to pursue the policy, practice, custom and usage of operating a compulsory biracial school system in Memphis, Shelby County, Tennessee, in violation of rights secured to plaintiffs by the Constitution and laws of the United States referred to above, as hereinafter more fully appears.

III

Plaintiffs in this case are the eighteen minors and their parents named in the caption of this complaint. Suit is brought on behalf of the minors by a parent of each as next friend. Plaintiffs are all citizens of the United States and the State of Tennessee, residing in Memphis, Shelby County, Tennessee. Plaintiffs are all members of the Negro race and bring this action on their own behalf and on behalf of all other Negro children and their parents in Memphis, Shelby County, Tennessee, similarly situated and affected by the policy, practice, custom and usage complained of herein. The minor plaintiffs and other minor Negro children similarly situated are eligible to attend and are now attending public schools in Memphis, Shelby County, Tennessee, which are under the jurisdiction, management and control of defendants and which are limited by defendants to attendance by Negro children only. Plaintiffs and members of their class are so numerous that it is impracticable to bring them all individually before this Court, but there is a common question of law and fact involved, a common grievance arising out of a common wrong, and a common relief is sought for each plaintiff and for each member of the class. The plaintiffs herein fairly and adequately represent the members of the class on behalf of which they sue.

IV

Defendant Board of Education of the City of Memphis, Shelby County, Tennessee, is a public body corporate organized and existing under the laws of the State of Tennessee. Defendant Walter P. Armstrong is the president of said Board and John T. Shea, Frances E. Coe, James S. Seessel, and Julian Bondurant are members of said Board. Defendant E. C. Stimbert is the Superintendent of the Memphis public school system. All defendants are charged by law with the duty of operating a system of free public education in the City of Memphis and are presently operating public schools in said city pursuant to the laws of the State of Tennessee.

V.

Plaintiffs allege that the defendants herein, acting under color of the laws of the State of Tennessee, have pursued and are presently pursuing a policy, practice, custom and usage of operating a compulsory biracial school system in the City of Memphis. The compulsory biracial school system operated by defendants consists of a primary system of elementary and high schools limited to attendance by white children of the City of Memphis. Said schools are staffed by white teachers, white principals and white sustaining personnel. Said white schools are located in various parts of the city and, regardless of location, these schools may be attended by white children only. The defendants also maintain a secondary system of "colored schools" or "Negro schools" limited to attendance by Negro children. These schools are likewise located in various parts of the city and, regardless of location, are limited to attendance by Negro children. These schools are staffed entirely by Negro personnel. The teachers are all Negroes, the principals are

all Negroes, and the sustaining personnel are all Negroes. The compulsory biracial school system is based solely upon race and color. Attendance at the various schools is determined solely upon race and color and the assignment of personnel is determined solely upon the race and color of the children attending the particular school and the race and color of the personnel to be assigned. A dual set of school zone lines is also maintained. These lines are based solely upon race and color. One set of lines relates to the attendance areas for the Negro schools and one set to the attendance areas for the white schools. These lines overlap where Negro and white school children reside in the same residential area.

VI

Plaintiff, Marjorie McFerrin, individually applied for the assignment of her child, Gerald McFerrin, to Vollentine Elementary School, which is an elementary school limited to attendance by white students and is located in the "white" school zone in which the minor plaintiff lives. This minor plaintiff was denied a transfer from Hyde Park Elementary School to Vollentine Elementary School solely because he is a member of the Negro race.

VII

All plaintiffs, together with many other members of the class which the plaintiffs represent, petitioned the Board of Education of the City of Memphis, and each of its members, in writing, on December 10, 1959, to comply with the decision of the United States Supreme Court in the School Segregation Cases by desegregating the public elementary and high schools of the City of Memphis. On February 8, 1960, some of the plaintiffs appeared at a meeting of the

Board of Education at which they again requested the Board to comply with the decisions of the United States Supreme Court in the School Segregation Cases and to end the policy, practice, custom and usage of operating the school system of Memphis, Tennessee, on a racially segregated basis.

The defendant Board of Education has failed and refused to take any steps to eliminate the dual school system in the City of Memphis, and the Board has failed and refused to present a plan for reorganization of the school system into a unitary, nonracial school system as required by said decisions.

VIII

The plaintiffs have not exhausted the administrative remedy provided by the Tennessee Pupil Assignment Law for the reason that the remedy there provided is inadequate to provide the relief sought by plaintiffs in this case. Plaintiffs have not exhausted the remedy provided by the Tennessee Pupil Assignment Law for the further reason that the criteria set forth in the Tennessee Pupil Assignment Law for assigning children to school have been and are applied by defendants only to Negro children seeking admission, assignment or transfer to white schools and have not been and are not applied by defendants to white children seeking admission, assignment or transfer to white schools. Plaintiffs allege that acting under color of the authority conferred upon them by the Tennessee Pupil Assignment Law, defendants have continued to maintain and operate a compulsory biracial school system in the City of Memphis, and have used the provisions of this law to deny admission of Negro children to certain schools solely

because of race and color, and have used this law to defeat rather than attain full compliance with the decisions of the United States Supreme Court in the School Segregation Cases. Defendants have not employed the Pupil Assignment Law as a means of abolishing state imposed race distinctions nor have they offered to plaintiffs by means of the Pupil Assignment Law a genuine means of securing attendance at nonsegregated public schools. Plaintiffs further allege that all children presently attending public elementary and high schools in Memphis have been assigned on the basis of race and color, despite the existence of a Pupil Assignment Law.

IX

Plaintiffs allege that all of defendants' budgets relating to the operation of the schools are based upon race and color and the fact that there is in operation a compulsory biracial school system. All new school construction plans proposed, adopted and executed by defendants are based upon the fact that there is in operation a compulsory biracial system of schools. All funds appropriated and expended by defendants are also appropriated and expended by defendants separately for Negro schools and separately for white schools.

X

Plaintiffs allege that many parts of the school curriculum are open only to white pupils and teachers.

XI

Plaintiffs, and members of the class which they represent, are injured by the refusal of defendants to cease operation

of a compulsory biracial school system in the City of Memphis. The compulsory biracial school system is predicated on the theory that Negroes are inherently inferior to white persons and, consequently, may not attend the same public schools attended by white children who are superior. The plaintiffs, and members of their class, are injured by the policy of assigning teachers, principals and other school personnel on the basis of the race and color of the children attending a particular school and the race and color of the person to be assigned. Assignment of school personnel on the basis of race and color is also predicated on the theory that Negro teachers, Negro principals and other Negro school personnel are inferior to white teachers, white principals and other white school personnel and, therefore, may not teach white children.

The injury which plaintiffs and members of their class suffer as a result of the operation of the compulsory biracial school system in the City of Memphis and as a result of the policy of assigning school personnel on the basis of race is irreparable and will continue until enjoined by this Court. Any other relief to which the plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience, not only to plaintiffs and those similarly situated, but to defendants as public officials.

WHEREFORE, plaintiffs respectfully pray that this Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a decree enjoining defendants, their agents, employees and successors from operating a compulsory biracial school system in Memphis, Shelby County, Tennessee.

2. Enter a decree enjoining defendants, their agents, employees and successors from maintaining a dual scheme or pattern of school zone lines based upon race and color.

3. Enter a decree enjoining defendants, their agents, employees and successors from assigning pupils to schools in the City of Memphis on the basis of the race and color of the pupils.

4. Enter a decree enjoining defendants, their agents, employees and successors from assigning teachers, principals and other school personnel to the schools of the City of Memphis on the basis of the race and color of the personnel to be assigned and on the basis of the race and color of the children attending the school to which the personnel is to be assigned.

5. Enter a decree enjoining defendants, their agents, employees and successors from subjecting Negro children seeking assignment, transfer or admission to the schools of the City of Memphis to criteria, requirements, and prerequisites not required of white children seeking assignment, transfer or admission to the schools of the City of Memphis.

6. Enter a decree enjoining defendants, their agents, employees and successors from approving budgets, making available funds, approving contracts, and policies, de-

signed to perpetuate or maintain or support a school system operated on a racially segregated basis.

In the alternative, plaintiffs pray that this Court enter a decree directing defendants to present a complete plan, within a period of time to be determined by this Court, for the reorganization of the entire school system of Memphis, Shelby County, Tennessee, on a unitary, nonracial basis, which shall include the assignment of children on a nonracial basis, the assignment of teachers, principals and other school personnel on a nonracial basis, the drawing of school zone lines on a nonracial basis, and the elimination of any other discriminations in the operation of the school system based solely upon race and color. Plaintiffs pray that if this Court directs defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending approval and full implementation of defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such further, other, additional or alternative relief as may appear to this Court to be equitable and just.

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IN THE

UNITED STATES DISTRICT COURT

IN AND FOR

THE WESTERN DISTRICT OF TENNESSEE

MEMPHIS DIVISION

DEBORAH A. NORTHCROSS and THERON W. NORTHCROSS, JR., Minors, by T. W. NORTHCROSS, SR., their father and next friend,

and

WILLIAM O. SPEIGHT, III, a Minor, by W. O. SPEIGHT, JR., his father and next friend,

and

ETTA SUE ISH, a Minor, by G. W. STANLEY ISH, JR., her father and next friend,

and

ALLEN JEROME CHRISTIAN and NATHANIEL CHRISTIAN, JR., Minors, by WILMA CHRISTIAN, their mother and next friend,

and

ARTHUR R. FLOWERS, JR., DENISE FLOWERS, and ELISE FLOWERS, Minors, by A. R. FLOWERS, SR., and ELOISE FLOWERS, their natural parents and next friends,

and

GERALD E. McFERRIN, a Minor, by MARJORIE McFERRIN, his mother and next friend,

and

ARTHUR E. HORNE, JR., MURIEL PHYLLIS HORNE, and JANET FAYE HORNE,

CIVIL ACTION NO. 3331

Minors, by A. E. HORNE, SR., their father and next friend,)

and

JAMES YARBROUGH, FRANCES MARIE YARBROUGH, SHERMAN W. DOTSON, GLORIA JEAN YARBROUGH, and THOMAS LEWIS YARBROUGH, Minors, by ODELL DOTSON, their grandfather and next friend,)

Plaintiffs,)

vs.

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, a body corporate, and WALTER P. ARMSTRONG, President of the Board of Education of the City of Memphis, JOHN T. SHEA, FRANCES E. COE, JANE S. SESSEL, JULIAN BONDURANT, Members of the Board of Education of the City of Memphis, and E. C. STIMBERT, Superintendent of Memphis School System,)

Defendants.)

ANSWER

Answer

Come the defendants and for their answer to the Complaint filed herein against them, respectfully show to the Court:

I.

Defendants admit that the jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Sec. 1343(3) and that this is a suit in equity authorized by Title 42, United States Code, Sec. 1983; but defendants deny that there has been or is now a deprivation under color of law, statute, regulation, custom and usage of a state of rights, privileges and immunities secured by the Constitution and laws of the United States in the manner and form alleged, or in any other manner and form; and defendants deny that rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution, or any other law, have been denied to plaintiffs.

II.

Defendants deny that they have pursued a policy, practice, custom and usage of operating a compulsory biracial school system in Memphis, Shelby County, Tennessee, and deny that they have violated any rights secured to plaintiffs by the Constitution and laws of the United States, or any other laws; but on the contrary, defendants would show that they have never denied to any person the right to attend a particular school on account of race or color.

III.

Defendants deny that plaintiffs herein fairly and adequately represent the members of the class on behalf of

which they sue; and deny that plaintiffs should have the right to maintain this cause as a class action.

IV.

Defendants admit the allegation contained in the paragraph numbered "IV" of the Complaint relating to the status of the parties and the obligation of defendants with respect to the operation of the public school system in the City of Memphis.

V.

Defendants deny each allegation contained in Paragraph V of the Complaint. In that connection defendants would show that prior to the decision of the Supreme Court of the United States in *Brown, et al.*, v. *Board of Education of Topeka, et al.*, defendants were obligated under Article XI, Section 12, of the Constitution of Tennessee and General State Law as well as under the provisions of the Charter granted to defendant, Board of Education of the Memphis City Schools, by the State Legislature in 1869 to operate a compulsory biracial school system; that by virtue of the decision in said case of *Brown* v. *Board of Education of Topeka* state Constitutions and statutes of such type directing compulsory segregation were held to be in derogation of the Constitution of the United States; thus, defendants recognize that they can no longer act under said constitutional provisions or statutes. Defendants admit that certain of its schools are attended and staffed solely by members of the white race and certain of its schools are attended and staffed by persons only of the Negro race; but since said Supreme Court decision defendants have not

compelled members of a particular race to attend a given school solely because of race as alleged in the Complaint. Though, as heretofore stated, certain schools are attended by members of a particular race, said attendance results not from compulsion but is entirely voluntary and flows from the desire on the part of a member of one race to associate and attend schools with members of his own race. For defendants arbitrarily to assign a Negro child to a school attended predominantly by white children, or to assign a white child to a school attended predominantly by Negro children could only constitute compulsory integration which defendants are advised is not required under the law, their sole obligation under the School Segregation Cases being to not deny to any person, on account of race, the right to attend any school that they maintain.

VI.

Defendants admit that plaintiff Marjorie McFerrin applied for the assignment of her child, then Gerald E. Young, to Vollentine Elementary School; that the said Gerald E. Young had attended Hyde Park Elementary School for three years and prior to her request to enter him in Vollentine School he had been assigned to attend the school which he had previously attended and, in fact, had registered to attend said school; that the said plaintiff then requested the Superintendent to re-assign her child to Vollentine, giving as her reason that it would be "more convenient". In this connection defendants would show that for many years, it has been the policy of the Board of Education to deny a request to transfer a student from one school to another on the mere grounds of convenience and literally thousands of such applications made on behalf

of both white and Negro children have been denied by the Board or its staff in times past, such denials being based solely on the aforementioned policy of the Board of Education without relation to race or color; and that the application of the McFerrin child referred to in Paragraph VI of the Complaint was denied by virtue of the policy of the Board of Education unrelated to the question of race. Defendants would further show that the transfer sought by plaintiff McFerrin was denied by the staff of the Board of Education and said plaintiff did not appeal that action to the Board of Education as she was authorized to do under the Pupil Placement Law, being Section 49-1701, et seq., Tennessee Code Annotated.

VII.

Defendants admit that they received the petition referred to in the paragraph number "VII" of the bill; and that on February 8, 1960, some of the plaintiffs appeared at a meeting of the Board where a lengthy hearing was accorded plaintiffs on the subject of the school system in this community; that at said meeting plaintiffs were advised by defendant Walter P. Armstrong, President of the Board of Education, that the school system was being operated under the Pupil Placement Law of the State of Tennessee, and plaintiffs were advised in unequivocal terms that plaintiffs' application for enrollment in a particular school would be considered by the Board in good faith and in accordance with law, both State and Federal.

VIII.

Defendants admit and, in fact, urge upon the Court that plaintiffs have not exhausted the administrative remedies

provided by the Tennessee Pupil Assignment Law. The exhaustion of such administrative remedies is a condition precedent to maintaining this action and for that reason plaintiffs' Complaint should be dismissed.

Defendants deny that the remedy afforded plaintiffs under said Pupil Assignment Law is inadequate; deny that the criteria set forth in said Assignment Law for assigning children to school has been or will be applied by defendants only to Negro children seeking assignment or transfer to white schools and, further, deny that the provisions of said Pupil Assignment Law have not been and are not applied by defendants to white children seeking assignment or transfer to white schools.

Defendants deny that acting under color of the authority conferred upon them by said Assignment Law, defendants have continued to maintain and operate a compulsory biracial school system in the City of Memphis; deny that they have used the provisions of this law to deny admission of Negro children to certain schools solely because of race or color; and deny that they have used this law to defeat compliance with the decisions of the United States Supreme Court in the School Segregation Cases; but on the contrary defendants would show that they have offered plaintiffs a genuine means of having their application to secure attendance at public schools considered in good faith through said Assignment Law; and that not one of the plaintiffs has made an effort to comply with said Law.

Admittedly, there are schools attended by persons of a single race but even until the filing of this Answer, no effort

nor proper application has been made by a member of the Negro race to attend a school attended by white students, nor of a white person to attend a school attended by Negro students, and it is impractical and impossible for defendants to pick here and there certain school children and integrate them whom these defendants have no way of knowing whether such selected children desire such involuntary and compulsory integration.

The Tennessee Pupil Placement Law affords to plaintiffs and defendants a simple and easy method of complying with the decisions of the United States Supreme Court in the school segregation cases while accomplishing at the same time the desired objective of leaving the operation and management of the local school system in the hands of local officials controlled by local laws, so long as those local laws are not violative of the Constitution of the United States.

Defendants would show that not only have plaintiffs failed to exhaust the administrative remedy provided for them but they have made no effort whatsoever even to initiate the said administrative remedy.

IX.

Defendants deny the allegations contained in Paragraph IX of the Complaint and, particularly, do defendants deny the operation of a compulsory biracial school system, though defendants concede that, in fact, there is no racial integration of its schools for the simple reason that no application has been made to defendants by a member of the Negro race to attend a white school and defendants do

not feel that they are obligated to introduce compulsory integration, selecting here and there certain students to integrate a school on an involuntary basis.

X.

Defendants deny the allegations contained in the paragraph numbered "X" of the Complaint that many parts of the school curriculum are open only to white pupils and teachers and would show that defendants have never denied to any student, white or Negro, any reasonable course for which that student is suited and which accords with what the Board of Education considers to be a legitimate educational objective and a justifiable expenditure of public funds.

XI.

With reference to the allegations contained in the paragraph numbered "XI" of the Complaint, defendants again reiterate that they are not operating a compulsory biracial school system nor do defendants believe nor act upon the theory that Negroes are inherently inferior to white persons, thus may not attend public schools attended by white children, or that white children are superior. Further, defendants deny that plaintiffs are injured by the policy of assigning teachers, principals and other personnel on the basis of the race and color of the children attending a particular school and the race and color of the person to be assigned; and defendants, likewise, deny the alleged inferiority of their Negro teachers, principals and other school personnel but on the contrary would show that their Negro principals, teachers and other personnel are ably fitted for the positions which they hold.

Answer

On the contrary, defendants verily believe that they have one of the finest school systems in the United States; that the buildings, equipment, principals, teachers and personnel are the finest obtainable considering the financial conditions of this community.

XII.

All allegations of the Complaint not herein either specifically admitted or denied are here and now generally denied; and denied as fully as though specifically denied herein.

And now having fully answered, the defendants pray to be hence dismissed.

JACK PETREE
LARRY CRESON
Attorneys for Defendants

EVANS, PETREE & COBB
LAUGHLIN, WATSON & CRESON
Counsel

Ruling of the Court

Thereupon, the Court announced the following ruling:

THE COURT: Well, gentlemen, we have had a full hearing of this case and here briefly are the Court's views about it.

Ruling of the Court

Of course, as is well known to all, the races have been separated in the Memphis Schools for many years. Several years ago the Supreme Court ruled in the celebrated Brown case that a state agency may not deny a child the right to attend the public school of his choice because of race or color. The law by now should be clear enough to all, and our problem in this proceeding, it seems to the Court, is to consider and decide, within the pleadings, ways and means of implementation whereby the Supreme Court's ruling may with all deliberate speed be made effectual with regard to the Memphis Schools.

Now, the parties are not in accord as to how this should be done. The defendant board members who are charged with the responsibility of operating the vast Memphis school system and upon whom the primary responsibility rests, are as far as the Court can tell fully resigned to the Supreme Court's decision and are definitely desirous of cooperating to the end that the transition from the segregated school to the integrated school be accomplished with dispatch and that the numerous problems incident to such a changeover be kept to a minimum.

The defendant board members are of the opinion that these things may be accomplished more expeditiously and more satisfactorily through resort to the Tennessee Placement Act of 1957 and are asking in this proceeding that the plaintiffs be first required to exhaust any available remedies under that Act. The defendants, as a matter of fact, deny they are operating a compulsory bi-racial school system. They say that for quite some time they have operated under the so-called Pupil Placement Act of the

State of Tennessee, and that its position on this has not been a secret, but generally known to the public, including the plaintiffs in this case. They say school personnel since the effective date of the Pupil Placement Act were given instructions by the Board that thenceforth the provisions of that law would govern the operation of the Memphis school system. They say the Board has since the effective date of the Placement Act attempted to and has operated under that act.

The defendants are asking that this complaint be dismissed because exhaustion of administrative remedies under the Placement Act is a condition precedent to the maintenance of this case.

The plaintiffs, it should be said, are seeking broad injunctive relief in this proceeding which would require immediate integration of all grades of all the public schools in the City of Memphis, and in the alternative are asking that the defendants be directed to present a complete plan for desegregation, or, more accurately, a plan for compulsory integration of the Memphis school system.

Now, the plaintiffs carry the burden with respect to the matters alleged in their complaint. And the Court would think the burden in this proceeding is upon the defendants to show the Placement Act is adequate to take care of the situation and that operations under it are feasible.

The plaintiffs seem to be apprehensive as to how the colored children will fare under the Placement Act. They are opposed to the handling of the matter under that Act.

Ruling of the Court

The plaintiffs' feelings in this regard seem to be based, as the Court sees it, not so much upon experience or upon what is shown to have occurred, as upon what they fear will occur. They take the position the placement law can only operate to maintain segregation in the Memphis schools, a device, so to speak, to evade the Supreme Court's decision.

In this connection, and as an example, they claim there was an application in September, 1958, on the part of the McFerren child for a transfer from a colored to a white school on grounds of convenience. Now, we have heard the proof with respect to this single isolated case. In the Court's view the superintendent's denial of the request on the grounds of convenience seems to have been in accordance with the long established policy of the Memphis Board of Education, and after the application of the factors provided for in the Pupil Placement Act here in question. However, that may be, it appears to the Court the superintendent acted properly and in accordance with good school administration in this instance. And it should be pointed out there was no effort to pursue the matter further by appeal to the Board of Education as might have been done under the Placement Act.

Well, the handling of the McFerren case by the superintendent is not proof in the Court's opinion of bad faith on the part of the defendants in the application of the provisions of the Tennessee Placement Act, if that is the purpose of its introduction into this proceeding.

The plaintiffs admit they have not in any case sought to take advantage of the provisions of the Pupil Placement

Act of Tennessee. In other words, they admit they have not availed themselves of the processes or remedies afforded by that law in respect to any single child. There seems to be no controversy about these things.

Now, it should be stated we have a very excellent Board of Education in the City of Memphis. It is made up of outstanding, dedicated citizens of good will, all of whom no doubt serve at considerable sacrifice. Their good faith with respect to the position they have taken concerning this matter the Court would say is not seriously questioned, if at all. When they assure this Court that any factors with respect to assignments of pupils under the Pupil Placement Act will be applied to both white and colored applicants alike, for either initial enrollment in a particular school or a transfer to another school, the Court is well satisfied it will be just that way. There is no evidence whatever that these factors or tests, as they have been referred to in the course of this proceeding, will be applied discriminately as between the races. The Court has full confidence in the members of the Memphis Board of Education and accepts their statements and representations in this matter at full face. The character of those in charge is all important, and the Court is firmly of the belief the Memphis Board of Education will administer its affairs under the Placement Act fairly and efficiently and impartially and without regard to race or color. The Court thinks they are entitled to continue their operations under the Act and to have an opportunity to show what they can do. It is much better within the framework of the state law, under which the governing rules are already spelled out and under which an aggrieved party may take his complaint all

the way to the state Supreme Court. A colored child has but to apply for initial entrance or transfer as is required of white children.

Without some such plan, the Court, for one thing, may find itself in the business of operating the Memphis schools. And of course this was never intended and should be avoided if at all possible.

The Court of Appeals in the Fourth Circuit, presided over by the late Chief Judge John Parker, one of the greatest judges of them all, in dealing with a somewhat similar case in North Carolina, very appropriately put it this way in this case of Carson vs. Board of Education, cited here today, and reported in 227 Federal 2nd 789,— incidentally, the North Carolina Pupil Placement law was under consideration in that case,—and I read a paragraph:

"In further consideration of the case, however, the District Judge should give consideration not merely to the decision of the Supreme Court but also to subsequent legislation of the State of North Carolina providing an administrative remedy for persons who feel aggrieved with respect to their enrollment in the public schools of the state. The Act of March 30, 1955, entitled, "An Act to Provide for the Enrollment of Pupils in Public Schools", being chapter 366 of the Public Laws of North Carolina of the Session of 1955, provides for enrollment by the county and city boards of education of school children applying for admission to schools, and authorizes the boards to adopt rules and regulations with regard thereto. It further provides for application to and prompt hearing by the board in the case of any child whose admission to any public school within the county or city administrative unit had been denied, with

right of appeal therefrom to the Superior Court of the county and thence to the Supreme Court of the state. An administrative remedy is thus provided by state law for persons who feel that they have not been assigned to the schools that they are entitled to attend; and it is well settled that the courts of the United States will not grant injunctive relief until administrative remedies have been exhausted."

Citing Myers vs. Bethlehem Shipbuilding Corporation, 303 U. S. 41;

Natural Gas Pipeline Company of America vs. Slattery, 302 U. S. 300;

Hageman Farms Corporation vs. Baldwin, 293 U. S., 163;

United States vs. Illinois Central Railroad Company, 291 U. S. 457;

Peterson Baking Company vs. Bryan, 290 U. S. 570;

Porter vs. Investors' Syndicate, 286 U. S. 461;

Matthews vs. Rodgers, 284 U. S. 521;

Prentiss vs. Atlantic Coast Line Railroad Company, 211 U. S. 210.

The Court, as you can see, cites I believe eight cases, eight Supreme Court cases.

A still later case from the Court of Appeals of the Eighth Circuit, case cited during the argument, Parham vs. Dove, reported in 271 Federal 2nd 132, is very much in point. The Pupil Placement Act of the State of Arkansas was under consideration in that case.

Our own Court of Appeals in recent years, the Court might point out here, affirmed Judges Darr and Miller

from other districts in Tennessee on this question concerning the exhaustion of administrative remedies in Thomas vs. Chambers, 236 Federal 2nd, and Donelson vs. United States, 264 Federal 2nd.

Now, it is important in these remarks that we not overlook the Shuttlesworth case cited. This, as has been pointed out, is a case strikingly similar to this one. It, for one thing, recognized the legal principle with which we are dealing in respect to administrative remedies.

The Alabama Placement Act was under consideration in that case and was ruled a valid law from the constitutional standpoint. The Supreme Court of the United States, as pointed out by Mr. Creson, affirmed the judgment of the three-judge court in the Shuttlesworth case, and its action is reported in 348 U. S. So it would seem that the courts are agreed on this particular proposition.

Of course, Judge William Miller was dealing with a very different situation in the cited Nashville case. He ruled the administrative remedies under the Placement Act were not adequate in that case because the Nashville Board of Education had, among other things, never abandoned a policy of compulsory segregation in the public schools of that city and was at the time of the hearing committed to a policy of compulsory segregation.

Nothing like this is present in our case. The Memphis Board has never had any such attitude or policy. On the contrary, the Memphis Board of Education openly announced many months ago its desire to integrate the Memphis schools through compliance with the Pupil Placement

Law, and has attempted to do so, and makes its position in this court proceeding crystal clear.

The Memphis Board, the Court feels, has fully realized it is under a clear legal duty to initiate and to bring about an elimination of racial segregation. The Court finds it has already done that, as a matter of fact, when they set up operations under the Tennessee Pupil Placement plan.

It should be pointed out that Judge McAllister in his opinion affirming Judge Miller in the Kelly case, incidentally, said cases involving desegregation, like others, depend upon facts of each particular case.

Now, Judge Darr's opinion has been cited. Judge Darr, of the Eastern District of this state, I think did on motion for summary judgment find the Pupil Placement Act of Tennessee inadequate. Judge Darr found, in effect the school board of Chattanooga was opposed to integrating its schools, was not operating under the Pupil Placement Act of Tennessee, and was making no attempt to do so; and further, that denials of the school board to admit colored children to white schools were because of race and color rather than a failure to comply with the Placement Act. But again, in our case the facts developed in the Chattanooga case are not similar at all.

The Court will go along with the Memphis Board of Education in its desire to continue in an orderly manner under the Tennessee Placement Laws. The defendants in this hearing have carried any burden required of them, in the Court's opinion. The Court thinks the state law furnishes a sound and complete plan, fully adequate to insure a fair

deal to the colored pupils of this community. It certainly is as good as can be done in view of the obstacles to be overcome. The Court feels it is much better than the grade-a-year plans we hear so much about and which are now in effect in a number of places. Indeed, it appears in and of itself an adequate plan which the plaintiffs in the alternative insist the defendants should submit.

The defendants' position with respect to the Tennessee Placement Law is sustained.

The Court hopes very much all concerned will now cooperate to the end that the provisions of the Tennessee Placement Act will be observed in Memphis and that we can go forward with the education of our children without discrimination.

What the Court has said in this general way will suffice, at least for the present, as its findings and conclusions under the rules. Mr. Petree, others in more detail are probably necessary, and the Court feels they should be prepared and filed with the Court.

* * * * *

(ADJOURNMENT)

Findings of Fact and Conclusions of Law

This cause came on to be heard by the Court sitting without a jury. This is a suit in which the plaintiffs seek an injunction against the defendants, being the Board of Education of the Memphis City Schools and the individual members and superintendent thereof, enjoining the defendants from operating a compulsory bi-racial school system in Memphis, Tennessee, and in the alternative plaintiffs ask that the Court direct the defendants to present a plan for desegregation, or more accurately, a plan for compulsory integration of the Memphis school system.

In their answer, defendants deny that they operate a compulsory bi-racial school system. Defendants admit that the school system is not racially integrated for the reason that no application has been made by a member of one race to attend a school attended solely by members of another race and defendants do not believe that they are obligated to introduce compulsory integration.

Defendants admitted the allegation of the Complaint that plaintiffs have not exhausted the administrative remedy afforded them under the Pupil Assignment Law, being Sections 49-1741, et seq., Tennessee Code Annotated, and that such willful failure or refusal is fatal to their Complaint, particularly in view of the public assurances given to plaintiffs and their counsel that this Act would be administered on a non-racial basis.

The Court, upon the pleadings, evidence and arguments of counsel, makes the following:

Findings of Fact

I. Defendant, Board of Education of the Memphis City Schools, is a corporation chartered by the General Assembly of the State of Tennessee, and is vested with the management and control of the school system in said City.

II. The plaintiff, Mrs. Marjorie McFerren, being the only one of the parties plaintiff who testified, is a resident of Memphis, Tennessee, and is the mother of Gerald E. Young, incorrectly referred to in the Complaint as Gerald E. McFerren; and the said Gerald E. Young attends the school system operated by defendants. There is no evidence in the record of the true residence of the remaining plaintiffs nor is there evidence as to the status of the plaintiffs as pupils in the Memphis School System.

III. Defendants do not operate a compulsory bi-racial school system; nor do defendants maintain a dual schedule or pattern of school zone lines based upon race or color; nor do defendants assign pupils to the schools in the City of Memphis on the basis of the race or color of the pupils; nor do defendants assign teachers, principals and other school personnel to their school system on the basis of race or color of the personnel to be assigned and on the basis of race and color of the children attending the schools to which the personnel is to be assigned; nor do defendants subject Negro children seeking assignment, transfer or admission to the schools of the City of Memphis to criteria, requirements and prerequisites not required of white children seeking assignment, transfer or admission to the schools of the City of Memphis; nor do defendants approve budgets, make available funds, approve contracts and policies which are designed to perpetuate, or maintain, or sup-

port a school system operated on a compulsory racially segregated basis.

IV. The Memphis Public School System is the fifteenth largest system, in terms of pupil enrollment, in the United States. Its enrollment as of June 6, 1960, was as follows:

Gross enrollment—107,090[1]
Net enrollment—101,907[2]
Membership enrollment—95,203[3]
Average membership enrollment—95,317[4]
Average number present—90,501[5]
Average number absent—4,812[6]

The percentage of non-white enrollment in the Memphis city schools as of June 6, 1960, was as follows:

Gross enrollment—43.7%
Net enrollment—43.4%

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1. *Gross enrollment*: The gross enrollment is increased every time a student originally enrolls in any Memphis City Schools, including transferring from one school within the Memphis City School System to another. The gross enrollment is not reduced at any time that a student either leaves the Memphis School System or transfers within the system to another school.

2. *Net enrollment*: Net enrollment includes only original enrollment in the school system during the year. Students who transfer within the school system and who re-enter are not counted the second time in the net enrollment. The net enrollment is not decreased at any time a student leaves a given school or the school system.

3 *Membership (20th day)*: The actual number of students in attendance on the 20th day of the pupil accounting period.

4 *Average membership enrollments* Computed by dividing total number of days belonging (this term means the number of days that the students on roll belonged in school) by the number of days in the period (20).

5 *Average number present*: The Average Daily Attendance is determined by taking the total days present and dividing by the number of days in the period.

6 *Average number absent*: The average number absent is determined by taking the total days all pupils were absent and dividing by the number of days in the period.

Membership (20th day)—44.2%
Average membership—44.2%
Average number present—43.8%
Average number absent—50.7%

V. The school zone maps introduced in the cause have no significance as evidence of a compulsory bi-racial school system. The sole purpose of such zone maps is to provide an area containing school population adequate for the efficient and economical utilization of the facilities and personnel of a particular school.

In this community, the vast majority of the patrons of the school system have voluntarily elected to have their children attend school with members of their own race. School authorities must take this fact into account in making provision for an adequate school population to assure efficient management of its schools. The zone lines reflected on the maps are flexible and every patron may have speedy recourse to the Board of Education for transfer of their child to another school without regard to race.

VI. The Board of Education, and its staff, acting under the Pupil Assignment Law have granted a number of transfers from one attendance zone to another upon application of its patrons.

VII. Defendants, who are charged with the responsibility of operating the vast Memphis School System, are fully cognizant of the decision of the United States Supreme Court in *Brown* v. *Board of Education* and the law announced in that case, that a state agency may not deny a child the right to attend the public school of his choice.

because of race or color; and said defendants clearly intend to cooperate to the end that the transition from the segregated school to the integrated school should be accomplished with dispatch and that the numerous problems incident to such a changeover be kept to a minimum. The Court and the defendant Board members are of the opinion that this transition should be accomplished more expeditiously and more satisfactorily through resort to the Tennessee Pupil Assignment Law of 1957, being Section 49-1741, et seq., Tennessee Code Annotated.

VIII. The defendants' intention to effect the integration of their school system under the Pupil Assignment Act has not been a secret but has been generally known to the public, including the plaintiffs in this case for quite some time; that the operation of the school system under the law has been made known by the Board of Education to the members of its staff and the principals of its schools; and that at a public meeting of the Board of Education held on February 6, 1960, each of the plaintiffs and their counsel were advised in clear and unequivocal terms that applications by its Negro patrons for the assignment or transfer of a Negro child to a school heretofore attended solely by white children would be duly considered and acted upon by the Board of Education under the Pupil Assignment Law without regard to the race or color of the applicant.

IX. That the Board of Education at said meeting of February 6, 1960, and on other public occasions, as well as in the sworn testimony of the members of said Board appearing in Court, has evidenced all good faith to this Court of its intention to comply with the decision of the United States Supreme Court and in all good faith to con-

sider applications for transfer without regard to race. The Court finds, therefore, that plaintiffs' fears that the law will be administered adversely to them are totally unfounded. The attitude of the plaintiffs toward the Pupil Assignment Law is based, not upon experience or upon what is shown to have occurred, but rather upon what plaintiffs seem to fear will occur. Such attitude is totally unfounded.

X. The Tennessee Pupil Assignment Law furnishes the plaintiffs an effective and adequate State remedy to effect the objectives which they seek in their Complaint.

XI. The plaintiffs admit that they have never exhausted the administrative remedies afforded them under said assignment law and, in fact, the Court finds that the plaintiffs, for reasons best known to them, have refused to even initiate the remedy afforded them by that law in spite of the public assurance to the plaintiffs by defendants of their good-faith application of said law.

XII. The application of Mrs. Marjorie McFerren for a transfer of her child was made in September, 1958; that in June, 1958, pursuant to the Pupil Assignment Law this pupil had been assigned to the Hyde Park School; that Mrs. McFerren desired that he attend the Vollentine School and upon presenting the child for registration at Vollentine, she was referred to the Board of Education; that such referral was the established procedure without regard to the race or color of the applicant; that before appearing at the Board of Education she registered her child at Hyde Park. She then appeared at the Board of Education and requested a transfer on the grounds of convenience as shown in the application, Exhibit 40. That said application

was rejected by the Superintendent and Mrs. McFerren was advised of her right of appeal to the Board of Education, as provided by the Pupil Assignment Law, and assured that all time limitations on her application for transfer would be waived pending a determination of the matter; and that though testifying that she did not know of this right of appeal, the Court finds that she had full knowledge of same but failed, refused and neglected to exhaust the administrative remedy afforded her.

XIII. Two Negro high school pupils testified that in September, 1960, they appeared at the Board of Education and requested a transfer from Melrose High School to South Side High School nearer to their home. The proof shows that it has long been the practice and policy of the Board of Education to consider pupil transfer applications only when the application is made by the parents; that utter confusion in the school system would result if pupils were permitted to request transfers from one school to another and the practice of the Board of Education to require transfer applications to be made by parents is a completely reasonable one. In line with the aforementioned policy of the Board of Education, the transfer applications of these two Negro high school pupils were never considered by the Board of Education or any member of its staff. The applications for transfer were not rejected on the basis of the race of the applicants.

XIV. In no instance has it been shown that the Board of Education of the Memphis City Schools has denied an application for transfer upon the basis of the race or color of the applicant upon proper application being made.

XV. The Tennessee Pupil Assignment Law was enacted by the General Assembly of the State of Tennessee several years prior to the filing of this suit. The Court judicially knows that the law was enacted in a background and with an attitude of compliance with the decision of the Supreme Court of the United States in *Brown* v. *Board of Education*, 349 U. S. 294, rather than in a background of opposition to said decision.

XVI. In the Court's judgment and as a matter of fact, the Tennessee Pupil Assignment Law furnishes as effective a plan for compliance with the decision of the Supreme Court of the United States as this Court could devise; provided, of course, that the law is administered in good faith. The defendants have assured the general public, including the plaintiffs, and have assured this Court during the trial that the law will be administered on a non-racial basis and in all good faith. It would be much better for the defendants to operate the school system within the framework of the state law rather than to have this Court find itself in the business of operating the Memphis schools.

XVII. To date, the plaintiffs have shown no inclination to comply with the plan of desegregation afforded them by the Tennessee Pupil Assignment Law. In order for this plan to work there must be not only compliance with that law but cooperation on the part of both the plaintiffs and the defendants. The plaintiffs share an equal obligation with the defendants in applying the provisions of that law and the doors of this Court will always be open to protect the constitutional rights of the plaintiffs if that law and the plan of desegregation provided therein are unconstitutionally applied.

XVIII. During argument the Court inquired of plaintiffs' counsel concerning the so-called grade-a-year plan of desegregation. Plaintiffs rejected this plan. The Court feels that the plan offered under the Tennessee Pupil Assignment Law permitting the transfer of any qualified pupil is much better than the grade-a-year plans so frequently discussed. The plan of the Tennessee Pupil Assignment Law is a sound and complete one and is fully adequate to insure a fair deal to all of the citizens of this community.

CONCLUSION OF LAW

I. The Court has jurisdiction of the parties and the subject matter of this cause.

Title 28, U.S.C.A. Sec. (1343) (3)
Title 42, U.S.C.A. Sec. 1983

II. The Supreme Court of the United States has declared that the state may not deny to any person on account of race the right to attend any school that it maintains.

Brown v. *Board of Education*, 347 U. S. 488, 74 Sup. Ct. 686, 98 L. Ed. 873

Brown v. *Board of Education*, 349 U. S. 294, 75 Sup. Ct. 753, 99 L. Ed. 653

Briggs v. *Elliot*, 133 Fed. Supp. 864, 865

Kelly v. *Nashville* (6 Cir.) 270 F. (2d) 209.

III. If the schools which the state maintains are open to children of all races, no violation of the constitution is involved even though the children of different races voluntarily attend different schools as they attend different

churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend.

Kelly v. *Nashville*, supra

Briggs v. *Elliot*, supra

IV. The Constitution does not require integration; it merely forbids discrimination. It does not forbid such segregation as follows as the result of a voluntary action; it merely forbids the use of governmental power to enforce segregation.

Kelly v. *Nashville*, supra

Briggs v. *Elliot*, supra

V. Each case of this type must be determined upon the basis of the facts and evidence adduced in each particular case.

Kelly v. *Nashville*, supra

VI. The Tennessee Pupil Assignment Law, being Sections 49-1741, et seq., Tennessee Code Annotated, furnishes to plaintiffs an effective and adequate remedy for the relief which they seek in their Complaint.

Shuttlesworth v. *Board of Education*, 162 F. S. 372, affirmed 358 U. S. 101; 3 L. Ed. (2d) 145; 79 Sup. Ct. 221;

Carson v. *Board of Education*, 227 F. (2d) 789;

Holt v. *Raleigh City Board*, 265 F. (2d) 95, cert. den. 361 U. S. 818, 4 L. Ed. (2d) 63; 80 Sup. Ct. 59.

VII. Plaintiffs are obligated to exhaust the administrative remedy afforded them before seeking judicial relief.

Carson v. *Board of Education*, supra;

Hood v. *Board of Trustees*, 232 F. (2d) 626, Cert. Den. 352 U. S. 870, 1 L. Ed. (2d) 76, 77 Sup. Ct. 95;
Carson v. *Warlick*, 238 F. (2d) 724;
Covington v. *Edwards*, 264 F. (2d) 780;
Holt v. *Raleigh City Board*, supra;
Dove v. *Parham*, 271 F. (2d) 132;
Cook v. *Davis*, 17[illegible] F. (2d) 595;
Thomas v. *Chamberlain* (1955, Tenn.) 143 F. S. 671, affirmed 236 F. (2d) 417 (6 Cir.)
Donaldson v. *U. S.* (6 Cir.) 264 F. (2d) 804.

.....
United States District Judge

Judgment

(Entered May 2, 1961)

The issues in the above-entitled action having been regularly brought on for trial before the Honorable Marion S. Boyd, District Judge, without a jury, the parties having appeared by their respective counsel and the issues having been duly tried; and the Court having filed its opinion on the fourteenth day of April, 1961, and its Findings of Fact and Conclusions of Law directing the entry of Judgment on the second day of May, 1961;

And it appearing to the Court that the plaintiffs' prayer for alternative relief directing the approval of a plan of desegregation should be sustained; and that the Tennessee Pupil Assignment Law furnishes a fully adequate and efficient plan of operating the Memphis City School System on a racially non-discriminatory basis;

IT IS ORDERED, ADJUDGED AND DECREED that the alternate prayer of the Complaint be sustained and the Tennessee Pupil Assignment Law be approved as the plan of desegregation for the Memphis City School System;

And it further appearing to the Court that defendants do not operate a compulsory bi-racial school system and that the plaintiffs have not exhausted the administrative remedies afforded them under the Tennessee Pupil Assignment Law.

IT IS ORDERED, ADJUDGED AND DECREED that the remaining prayers of the Complaint be denied.

The costs of the cause are assessed equally against the parties.

MARION S. BOYD
United States District Judge

Dated: 5-2-61

(Seal)

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DEBORAH A. NORTHCROSS, ET AL.,
Plaintiffs-Appellants.

vs.

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, *et al*,
Defendants-Appellees.

No. 14,642

MOTION TO DISMISS THE APPEAL

Come the defendants, Board of Education of the Memphis City Schools, the individual members of said Board, and its superintendent and respectfully move the Court for an order dismissing the appeal in the captioned matter, and in support of said motion, defendants would show:

I.

That as appears from the affidavit of William D. Galbreath, Esq., president of the Board of Education of the Memphis City Schools, said affidavit being attached hereto, the Memphis school system was desegregated on October 3, 1961, by members of the class for which relief was sought; that said desegregation was accomplished pursuant to the provisions of the Tennessee Pupil Assignment Law,

being Sections 49-1701, et seq., Tennessee Code Annotated, and under the plan of desegregation directed in the judgment of the District Court in this cause; that the relief sought by the plaintiffs in the Court below has been granted to them as the result of their application of the administrative remedy which the District Court suggested that they seek; and that the issues involved in this proceeding have become moot.

WHEREFORE, defendants respectfully move the Court that this appeal be dismissed.

II.

That in the alternative defendants respectfully move that the affidavit of William D. Galbreath, Esq., attached hereto in support of said motion to dismiss the appeal be considered as a part of the record in this cause pursuant to the authority vested in the Court by Rule 75-H of the Federal Rules of Civil Procedure.

/s/ Jack Petree
/s/ Larry B. Creson
Attorneys for Defendants-Appellees

EVANS, PETREE & COBB
LAUGHLIN, WATSON & CRESON,
Of Counsel

Certificate of Service

Copy of this Motion To Dismiss The Appeal served on A. W. Willis, Jr., Esq., R. B. Sugarmon, Jr., Esq., and Miss Constance Mobley, Attorneys for Plaintiffs, this the 14th day of December, 1961.

/s/ Jack Petree

STATE OF TENNESSEE
COUNTY OF SHELBY

AFFIDAVIT OF WILLIAM D. GALBREATH, PRESIDENT OF THE BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS

My name is William D. Galbreath. I am president of the Board of Education of the Memphis City Schools, having been elected to that office to succeed Walter P. Armstrong, Jr.

During my tenure as president of the Board of Education I have thoroughly familiarized myself with the matters involved in this litigation and the events occurring subsequent to the decision rendered by the United States District Court for the Western District of Tennessee.

Even prior to the District Court's decision and prior to my becoming president of the Board of Education I was aware of the fact that the Board had publicly announced that it intended to use the Tennessee Pupil Assignment Law as the plan of desegregating the Memphis school system and the several public assurances given by the Board that said Act would be applied on a racially nondiscriminatory basis. The various news media in the City of Memphis have described this as the "good faith plan" of the Board of Education.

On August 28, 1961, the first day of registration in the Memphis school system, forty-two Negro children made application to desegregate the public school system in Memphis. This was the first and only time that the admin-

istrative remedy had been initiated. The seeking of that remedy met with success. The procedures prescribed by the Tennessee Pupil Assignment Law were immediately put into effect by the Board of Education with the view of successfully desegregating the school system under the State law.

By virtue of the wholehearted cooperation of the Board of Education and its counsel, each locally elected governmental agency, such as the Mayor and Board of Commissioners of the City of Memphis, the Shelby County Quarterly Court, the Shelby County Board of Commissioners, all forms of local news media and the cooperation of the forty-two applicants and their counsel, said counsel being the local counsel for plaintiffs in this litigation, the schools of the City of Memphis were desegregated on October 3, 1961, when thirteen Negro children were admitted to three schools heretofore attended by white children.

The desegregation of this school system was accomplished in a spirit of good will and cooperation. It was accomplished without the opposition of political leaders. On the contrary, it was accomplished with their support and endorsement. It was accomplished without the intervention of Federal Agencies. On the contrary it was accomplished under the State law as a purely local matter affecting only the citizens of this community. It was accomplished without strife, turmoil or ill will. On the contrary it was accomplished in an air of peace and tranquility that has not been experienced in any Southern community. Finally, this event was accomplished without fanfare and in a fashion that was deemed best to reflect only good on the

community. In a word, it was accomplished in good faith with every member of the community recognizing the rights, duties, desires and obligations of all concerned.

Of the forty-two applicants initially seeking the remedy afforded them under the Assignment Law, four of them abandoned their applications and the Board of Education had for consideration thirty-eight applications. Of these thirty-eight applications more than one-third of them were approved. This action of the Board should be compared with the action of other systems that have recently faced this problem. Of those applicants who were rejected, not one has raised an objection to the Board's action and at this time, more than two months after the desegregation of the Memphis Schools, the Board of Education's plan has apparently been accepted by all of the citizens of this community.

/s/ William D. Galbreath

Personally appeared before me, a Notary Public in and for said County and State, William D. Galbreath who makes oath that he is president of the Board of Education of the Memphis City Schools and that the foregoing statement is true.

WITNESS my hand and seal this fourth day of December, 1961

/s/ Grace C. Canale
Notary Public

My commission expires:
July 7, 1965

No. 14642

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DEBORAH A. NORTHCROSS, *et al*,
Defendants-Appellees,
vs.
THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, *et al*,
Plaintiffs-Appellants.

APPEAL from the United States District Court for the Western District of Tennessee.

Decided March 23, 1962.

Before: CECIL, WEICK and O'SULLIVAN, Circuit Judges.

CECIL, Circuit Judge. This appeal involves the public school system of the City of Memphis, Tennessee.

The appellants were plaintiffs in the District Court for the Western District of Tennessee. They are eighteen minors and their parents, all of the Negro race, who bring the action on behalf of themselves and all other Negro children and their parents in Memphis, similarly situated. The defendants-appellees are the Board of Education of the City of Memphis, the members thereof individually, and the superintendent of schools. The parties will be referred to hereinafter as plaintiffs and defendants.

Jurisdiction of the District Court is invoked by virtue of section 1343(3), Title 28, U.S.C. By this act, jurisdiction is conferred "To redress the deprivation, under color of any State law, . . . custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . for equal rights of citizens or of all persons within the jurisdiction of the United States."

It is alleged in the complaint, inter alia, that the defendants maintain and operate a compulsory biracial school system in the City of Memphis, in which certain schools are designated for Negro students only and staffed by Negro personnel, and certain other schools are designated for white students only and staffed by white personnel. It is further alleged that there is separate geographical zoning for the Negro and white schools and that these zones in some instances overlap so that both Negro and white students are in the same zone. The plaintiffs also allege that they have not exhausted their remedies under the Tennessee Pupil Assignment Law for the reason that it does not provide an adequate remedy for the relief they seek.

By their complaint, briefly stated, the plaintiffs seek an order enjoining the defendants from operating a biracial school system or in the alternative for an order to the board to submit a plan for the reorganization of the schools on a unitary non-racial basis.

The defendants in their answer deny that they maintain a compulsory biracial school system in the city of Memphis. They admit that certain of their schools are attended and

staffed solely by members of the white race and that certain other schools are attended and staffed solely by members of the Negro race. They concede that there is no racial integration of their schools for the reason that no members of the Negro race have made applications for transfers to white schools. The defendants allege in their answer that the Tennessee Pupil Assignment Law affords to plaintiffs and defendants a simple and easy method of complying with the requirements of the Supreme Court of the United States in the school segregation cases.

A trial was had in the District Court upon the issues presented by the pleadings, after which the District Judge made findings of fact and conclusions of law and entered judgment on May 2, 1961.

The trial judge found as facts, that the defendants do not operate a compulsory biracial school system or maintain a dual schedule or pattern of school zone lines based upon race or color; that the school zone maps introduced in evidence have no significance as evidence of a biracial school system; that the Tennessee Pupil Assignment Law furnishes the plaintiffs an effective and adequate remedy for integration and as effective a plan for compliance with the decisions of the Supreme Court of the United States as the Court could devise; that the defendants' intention to effect integration of the school system under the Pupil Assignment Act has been open and generally known to the public and that the plaintiffs and their attorneys were so advised at a public meeting of the Board of Education on February 6, 1960; that the Board has evidenced all good faith to the public and to the court of its intention to comply with the decision of the Supreme Court.

By judgment entry the court sustained the plaintiffs' prayer for alternative relief by approving the Tennessee Pupil Assignment Law as a plan for desegregation and denied further relief to the plaintiffs for the reason that the defendants did not operate a biracial school system and the plaintiffs had not exhausted their administrative remedies under the Assignment Law.

On December 14, 1961, after this appeal was docketed, the defendants filed in this Court a motion to dismiss the appeal. The basis of the motion is that the Board desegregated the schools of Memphis on October 3, 1961, and that the issues involved in the appeal have now become moot. This motion is supported by an affidavit of the president of the Board of Education.

In this affidavit it is alleged that on August 28, 1961, forty-two Negro children made application to desegregate the public school system of Memphis; that four of them abandoned their applications and thirty-eight were considered by the Board; and of these applicants thirteen were admitted to three schools previously attended by white children.

This is denominated in the affidavit as desegregation of the Memphis schools and it is alleged that it was accomplished through the coorporation of members of the Negro race, the news media and public officials of Memphis. It is further alleged that it was accomplished without fanfare or strife, and that it has been generally accepted by all of the citizens of the community.

By filing this motion and affidavit, after the appeal was docketed, the defendants enlarged the record without an opportunity to the plaintiffs to be heard on the subject involved. The affidavits does not state what criteria was applied in granting these transfers, but we were informed in oral argument that they were based on scholarship by tests not given to white children in the same school.

At the time this action was brought, according to the evidence, there were in the city of Memphis approximately fifty-five white elementary school units, fifteen white junior high schools and nine white senior high schools. At the same time, there were approximately thirty-one Negro elementary school buildings, seven Negro junior high, and six Negro senior high units. There were separate technical high schools and separate schools for Negro and white crippled children. There are approximately 100,000 pupils in the Memphis school system, forty-four percent of whom are Negroes.

The Pupil Assignment Law was enacted by the Tennessee legislature in 1957. Sections 49-1701—49-1764 Tenn. Code. At the time this action was filed in March of 1960, no Negro pupil had ever been transferred to a white school, nor had a white pupil ever been transferred to a Negro school, under the operation of the law. The superintendent of schools testified that the Assignment Law is not applied to children entering school for the first time. In the case of such children, the principal to whom application is made will take into consideration the applicant's race and residence in determining an assignment to a school. The evidence also shows that there are dual area

zone maps, one for white schools and one for Negro schools. These zones may overlap and there may be Negro and white children in the same zone, but each goes to the school for his respective race.

One of the plaintiffs, Mrs. McFerrin, applied in 1958 for admission of her son to Vollentine, a white school. Mrs. McFerrin and her son lived in an area assigned to Hyde Park, a Negro school. The Vollentine school is located four blocks from the home and on the same side of the street. Hyde Park is ten blocks from their home and reached by an indirect route. She asked for the transfer for convenience, but the superintendent denied her application for the reason that transfers were not granted for convenience.

In 1960 two Negro girls who were enrolled in Melrose High School, (Negro), sought a transfer to South Side High School, (white). They had moved within four blocks of the South Side School. They were told that they were in the Booker T. Washington (Negro) district and were offered transfers to that school. It required a thirty-to forty-five minute bus ride to get to Melrose, and Washington was almost equally far away, and they refused the transfer.

In May 1954, the Supreme Court of the United States decided that "Separate educational facilities are inherently unequal," and that segregation of the races in separate schools deprived the minority group of the equal protection of the laws guaranteed by the Fourteenth Amendment. *Brown v. Board of Education*, 347 U. S. 483. At this

time, the Constitution of Tennessee provided that white and Negro children were not to be received as scholars together in the same school. Art. 11, Sec. 12, Tenn. Const. The statutes of Tennessee also prohibited white and Negro children attending the same schools. Sections 49-1005 49-1107, and 49-3701 Tenn. Code.

It is conceded that these provisions of the Constitution and statutes were no longer enforcible after the *Brown* decision. The defendants now claim that compulsory segregation of the races for school purposes has been abandoned in the city of Memphis, and that the Board of Education has adopted a plan for full compliance with the second *Brown* decision, 349 U.S. 294, for the admission of Negroes to its public schools on a racially non-discriminatory basis.

The questions presented are whether the schools of Memphis are being operated on a racially non-discriminatory basis and whether the Pupil Assignment Law can in and of itself constitute a plan for such operation.

This law declares that the public schools shall be free to all persons above the age of six; provides that the board of education of each city shall enroll and assign all pupils to schools and subject to review or certain exceptions this exercise of power by the board is final; that certain criteria or factors, some twenty in number, may be considered in making assignments; that each school child shall be assigned to the same school he attended prior to January 25, 1957, until graduation therefrom; that the board may prescribe a date for filing applications for admission or transfer and refuse to consider applications filed after such

date; and that the board may conduct investigations, surveys, and give tests in determining the schools to which pupils shall be assigned.

There is a further provision that if there is dissatisfaction with the assignment of a child, both parents may make application for a hearing before the board and a transfer to another school. The board shall consider each case separately and its decision shall be based on the criteria heretofore mentioned. From an unfavorable decision of the board, both parents may petition the chancery court of the county where the board of education is located for review. The review is based on a transcript of the proceedings before the board. The findings of the board shall be final if supported by substantial evidence on the entire record. The court has no power to suspend an order of the board until after final determination, except after a preliminary hearing and upon a prima facie showing by the petitioner that the board has acted arbitrarily, fraudulently or unlawfully, to the manifest detriment of the child. A further appeal may be taken to the court of appeals or the Supreme Court by both parents or the board of education.

The Pupil Assignment Law might serve some purpose in the administration of a school system but it will not serve as a plan to convert a biracial system into a nonracial one.

In *Kelly v. Board of Education of City of Nashville*, 159 F. Supp. 272, 276, D.C. M.D. Tenn., it was held that the administrative remedy under the act was inadequate to

end racial discrimination in the public school system of Nashville, Tennessee.

In *Gibson v. Board of Public Instruction of Dade County, Florida*, 272 F. 2d 763, 766, C.A. 5, the court said: "That being true, we cannot agree with the district court that the Pupil Assignment Law, or even that the Pupil Assignment Law plus the Implementing Resolution, in and of themselves, met the requirements of a plan of desegregation of the schools or constituted a 'reasonable start toward full compliance' with the Supreme Court's May 17, 1954, ruling. That law and resolution do no more than furnish the legal machinery under which compliance may be started and effectuated. Indeed, there is nothing in either the Pupil Assignment Law or the Implementing Resolution clearly inconsistent with a continuing policy of compulsory racial segregation."

And in *Gibson v. Board of Public Instruction of Dade County, Florida, et al.*, 246 F. 2d 913, 914, C.A. 5, the court said, at p. 914: "Neither that nor any other law can justify a violation of the Constitution of the United States by the requirement of racial segregation in the public schools. So long as that requirement continues throughout the public school system of Dade County, it would be premature to consider the effect of the Florida laws as to the assignment of pupils to particular schools." See also, *Mannings v. Board of Public Instruction of Hillsborough County, Florida*, 277 F. 2d 370, C.A. 5.

In *Parham & Dove*, 271 F. 2d 132, C.A. 8, the court required three Negroes, individually, who sought transfers

to white schools to exhaust their administrative remedies. However, the court said, at p. 137: "In this field of constitutional paramountcy, *a placement or assignment statute is entitled to be accorded recognition only as an implement or adjunctive element on the part of a state for effecting or orderly solution to its desegregation difficulties*, in proper relationship to its other school-system problems, but with a subservience to the supreme-law declaration of the *Brown* cases as to all imposed segregation and the obligation owed to get rid thereof within the tolerance entitled to be allowed play under these decisions for accomplishing that result." (Emphasis added.)

This position was reaffirmed in *Dove v. Parham*, 282 F. 2d 256, 261, C.A. 8, where the court held that assignment and placement laws were "subordinate to the duty to move forward, by whatever means necessary, to correct the existing constitutional violation with "all deliberate speed.'"

Opinions of the Fourth Circuit have been cited in support of the defendants' position. [1]We consider them, as did the Fifth Circuit. "Obviously, unless some legally nonsegregated schools are provided, there can be no constitutional assignment of a pupil to a particular school. We do not understand that the Fourth Circuit has ruled to the contrary. The net effects of its rulings, as we understand

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[1]*Hood v. Board of Trustees of Sumter County School District No. 2*, Sumpter County, South Carolina, 286 F. 2d 236, C.A. 4; *McCoy v. Greensboro City Board of Education*, 283 F. 2d 667, C.A. 4; *Holt v. Raleigh City Board of Education*, 265 F. 2d 95, C. A. 4, cert. denied, 361 U.S. 818; *Hood v. Board of Trustees of Sumter County School District No. 2*, Sumter County, South Carolina, 232 F. 2d 626, C.A. 4, cert. denied, 352 U.S. 870; *Carson v. Board of Education of McDowell County*, 227 F. 2d 789, C.A. 4.

them, is that the desegregation of the public schools may occur simultaneously with and be accomplished by the good faith application of the law providing for the assignment of pupils to particular schools. If that understanding is correct, then we readily agree." *Gibson v. Board of Public Instruction of Dade County, Florida*, 272 F. 2d 763, 767, C.A. 5.

More than seven years had elapsed from the time of the first *Brown* decision to the time of the trial and judgment of this case in the District Court. More than four years had passed from the time of the enactment of the Assignment Law, and yet at that time the schools of Memphis were as biracial as they had been under the Tennessee Constitution and statutes.

The defendants admit in their brief that the Memphis school system was in fact a biracial one. They say, however that this does not result from compulsion on their part. It is voluntary on the part of the Negro pupils and parents because they do not avail themselves of the transfer provisions of the law.

It was decided in the first *Brown* case that the separation of children of similar age and qualifications solely because of race was a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. Since that decision, there cannot be "Negro" schools and "white" schools. There can now be only schools, requirements for admission to which must be on an equal basis without regard to race.

Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right. "Obviously the maintenance of a dual system of attendance areas based on race offends the constitutional rights of the plaintiffs and others similarly situated and cannot be tolerated." *Jones v. School Board of City of Alexander, Virginia*, 278 F. 2d 72, 76, C.A. 4.

The Pupil Assignment Law assigned, by legislative enactment, all children who had previously been enrolled in the schools to the same schools that they had attended under the constitutional and statutory separate racial system. They were to remain in these same schools until graduation unless transferred by a request of both parents. At the end of the school year of graduation, from an elementary or junior high, they were assigned to a school for the next year. As a matter of practice, Negroes were assigned to so-called "Negro" schools. Although it is claimed that beginning pupils could apply to any school, the practice was for the Negro children to be assigned to "Negro" schools.

It is argued that the transfer provisions of the law create a voluntary system and that, by reason of them, there is no compulsory segregation of races. These transfer provisions do not make of this law a vehicle to reorganize the schools on a non-racial basis. Nor has the practice for four years under the law been in the direction of establishing non-racial schools. Negro children cannot be required to apply for that to which they are en-

titled as a matter of right. If they are deprived of their Constitutional rights, they are not required to seek redress from an administrative body before applying to the courts. *Borders v. Rippy*, 247 F. 2d 268, C.A. 5. The burden rests with the school authorities to initiate desegregation. *Cooper v. Aaron*, 358 U.S. 1, 7.

Any pupil through both parents may request a transfer but in the final analysis it is up to the school board to grant or reject it. Although an appeal may be taken to the courts, it would be an expensive and long drawn out procedure, with little freedom of action on the part of the courts. In determining requests for transfers, the board may apply the criteria heretofore mentioned. None of these criteria is based on race, but in the application of them, one or more could always be found which could be applied to a Negro. The denial of the transfers herein referred to is significant of the practical application of the transfer provisions of the law.

The trial judge found that the defendants do not operate a compulsory biracial school system. It might be said that by reason of the transfer aspect of the law, it is not compulsory. The real question is, Do they maintain separate schools? The first *Brown* case decided that *separate schools organized on a racial basis are contrary to the Constitution of the United States.*

The inescapable conclusion is that at the time of the judgment in this case the schools of Memphis were operated on a basis of "white schools" for white children and "Negro schools" for Negroes. The findings of fact that

the school zone maps introduced in evidence have no significance as evidence of a biracial school system, and that the defendants do not maintain a dual schedule or pattern of school zone lines, based upon race or color, are contrary to the evidence and clearly erroneous. As we have previously said, the Pupil Assignment Law cannot serve as a plan to organize the schools as a non-racial system.

We do not discuss exhaustion of remedies under the statute for the reason that we hold the Pupil Assignment Law is not adequate as a plan for reorganizing the schools into a non-racial system. *Kelly v. Board of Education of City of Nashville*, 159 F. Supp. 272, 277, D.C. M.D. Tenn; *Gibson v. Board of Public Instruction of Dade County, Florida*, 246 F. 2d 913, C.A. 5.

The motion to dismiss the appeal must be and it is hereby overruled. The admission of thirteen Negro pupils, after a scholastic test, which the white children did not have to take, out of thirty-eight who made application for transfer, is not desegregation, nor is it the institution of a plan for a non-racial organization of the Memphis school system.

We are impressed that the defendants honestly and sincerely desire to comply with the law, but they have pursued the mistaken belief that "full compliance" as required by the Supreme Court can be had under the Pupil Assignment Law. The practice over a long period of time of separate schools in certain geographical areas of our nation has become a way of life in those areas, and we realize that a change is not easy to accomplish. But as

this Court must follow the supreme law of the land, as interpreted by the Supreme Court: so must boards of education follow it. *Cooper v. Aaron*, 358 U.S. 1. We urge the defendants herein to adopt and submit to the District Court some realistic plan for the organization of their schools on a non-racial basis, in "full compliance" with the mandate of the Supreme Court, and to do so "with all deliberate speed."

The judgment of the District Court is reversed with instructions to restrain the defendants from operating a biracial school system in Memphis, or in the alternative to adopt a plan looking toward the reorganization of the schools, in accordance with the Constitution of the United States. The District Court should retain jurisdiction of the case during the period of transition. *Brown v. Board of Education*, 349 U.S. 294, 301.

No. 14642

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Defendants-Appellees. DEBORAH A. NORTHCROSS, *et al*, *Plaintiffs-Appellants,* vs. THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, *et al*,	ON PETITION for Rehearing.

Decided April 26, 1962.

Before: Cecil, Weick and O'Sullivan, Circuit Judges.

Per Curiam: This cause is before the Court on petition for rehearing.

One point raised by the petition is that the Court made an erroneous statement in its opinion, to the effect that Negro children were given scholastic tests not given to white children, in order to be admitted to "white" schools, under the Tennessee Pupil Assignment Law.

This matter arose out of a motion of the appellees to dismiss the appeal supported by an affidavit. In this affidavit it was alleged that the schools of Memphis were desegregated by the admission of thirteen Negro students

to "white" schools. The affidavit did not specify what criteria were applied in order to allow these admissions.

This motion and affidavit tended to change the character of and add to the issues presented on the appeal without an adequate opportunity for a hearing. There was no denial that thirteen students had been thus transferred and there was nothing in the affidavit to be traversed by counter-affidavit. This Court cannot accept the conclusion of the appellees that these transfers under the Tennessee Pupil Assignment Law constituted desegregation.

Upon inquiry in oral argument, the Court understood that scholastic tests were given to the Negro students and not to the white students of the same schools. The necessity for this inquiry arose by reason of the interjection of the motion into the record, as heretofore stated.

The Court does not wish to make an incorrect statement of fact and will amend its opinion, in respect to the claimed error, if it is shown to be an error. For this purpose, the Court will permit the parties to submit affidavits upon the sole question of how scholastic tests were applied and to whom, in connection with the transfers.

The Court in its opinion concluded that the Pupil Assignment Law, while not unconstitutional on its face and while it may serve some function in proper school administration, it cannot serve as a vehicle for desegregation. Other points raised by the petition for rehearing have been previously considered and found to be without merit.

The petition for rehearing will be denied.

No. 14642

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DEBORAH A. NORTHCROSS, *et al*,
Plaintiffs-Appellants,

vs.

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, *et al*,

NO. 14,642

AFFIDAVIT

STATE OF TENNESSEE)
COUNTY OF SHELBY)

R. B. SUGARMON, JR., who after being duly sworn according to the law, deposes and says:

That he is over twenty-one (21) years of age, a resident citizen of Memphis, Shelby County, Tennessee, and an attorney duly licensed to practice law in the State of Tennessee; and

That he is one of the attorneys of record in Cause No. 14,642, Deborah A. Northcross, et al, Plaintiffs-Appellants, vs. The Board of Education of the City of Memphis, et al, Defendants-Appellees, now pending in the United States Court of Appeals for the Sixth Circuit; and

Affidavit of R. B. Sugarmon

That this affidavit is being made for the purpose of revealing what information he has concerning the question of, "How and to whom scholastic tests were applied in connection with the Defendants-Appellees' motion for rehearing" and in accordance with the opinion of the Court of April 26, 1962, when said petition for rehearing was before said Court; and

That he, along with A. W. Willis, Jr., represented, as attorneys, parents of forty-two (42) Negro children in their effort to secure transfers from schools attended solely by members of their race to schools attended solely by white children, all of said children involved being first graders; and

That as counsels for said parents, they observed certain tests being administered, Binet I.Q Tests and Reading and Readiness Tests; and

That, on several occasions, they carried some of the children to the respective testing rooms, however, neither counsels or parents were permitted to enter the testing rooms during the time tests were being given; and

That, on one occasion, counsels recall seeing one or two white children enter the testing room during the time when Reading and Readiness Tests were to be administered to ten or twelve Negro children; and

That it was the understanding of the counsels that the white children were also first graders making applications to be transferred from one school solely attended by white

children to another school solely attended by white children; and

That counsels also learned from observation that the Reading and Readiness Tests are routine tests given to all first graders after they have been in school for approximately three or four weeks; and

That it is his understanding that the Reading and Readiness Tests are given in order to give the respective teachers some guide as to the readiness of his or her respective students; and

That the procedure that lead to admission of thirteen (13) Negro children to schools previously attended solely by white children was in substance as follows:

That Supt. E. C. Stimbert, in a television speech shortly before registration was scheduled, stated that parents of first graders were to take their first graders to a school of their choice; and

That the next day, the newspapers also reported this portion of Supt. Stimbert's speech indicating that parents were to take their first graders to the school of their choice; and

That on the day of registration, some seventy-five (75) Negro children appeared at schools previously attended solely by white children; and

That these children were directed to the Attendance Officer of the Board of Education; and that at some

of the schools applications for enrollment were filled out and forwarded to the Attendance Office of the Board of Education; and

That a few days later, all of the forty-two (42) Negro parents whom we represented received copies of notices assigning their children to schools attended solely by Negro children together with copies of transfer procedures; and

That upon advice of their counsels, the Negro children then attended the schools where they were assigned; and

That in the meantime, counsels then prepared applications for transfer and requested hearings; and

That counsels were advised by the Board of Education, pursuant to the pupil placement law, that they wished to administer Reading and Readiness and I.Q Tests unto the children we represented and also that the Board of Education wished to make family background studies that involved the sending of social workers to the homes of the children; and

That as counsels for parents of the Negro children, he and A. W. Willis, Jr., assisted in arranging schedules for tests and visits to the homes of the children by the social workers; and

That the first day of registration was August 28, 1961, and

That the Negro children attended school along with other children beginning August 31, 1961 at the schools solely attended by Negro children where they had been assigned and remained in said schools until October 3, 1961, when thirteen (13) of the forty-two (42) Negro children were transferred to schools previously attended solely by white children; and

That the remaining requests for transfer were denied and the children whom they represented continued to attend the schools where they were originally assigned; and.

That as far as he knows, tests were given only to children who had requested transfers and he has no way of knowing whether tests were given to other first graders for the purpose of admission other than those requesting transfers; and

That the counsels were informed at the hearing by the testing officer that the Binet I-Q Tests were not given to any children except in special cases having nothing to do with placement or assignment of the children initially; and

That the counsels were further informed by the testing officer that the Reading and Readiness Tests were given as a routine matter several weeks after assignment has been made and after expiration of the period of time in which requests for transfers can be made.

.....

Affiant.

SWORN AND SUBSCRIBED TO before me this the 30th day of April, 1962.

.....

Notary Public.

MY COMMISSION EXPIRES:

.....

CERTIFICATE OF SERVICE

This is to certify that on the 30th day of April, 1962, I served a copy of the foregoing affidavit on Jack Petree, Esq., Evans, Petree & Cobb, Commerce Title Building, Memphis, Tennessee, and Larry B. Creson, Esq., Laughlin, Watson & Creson, Exchange Building, Memphis, Tennessee, by mailing one (1) true copy of same to each of them at addresses shown herein.

.....

Attorney for Plaintiff-Appellee

DATED: April 30, 1962

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Defendants-Appellees,		
DEBORAH A. NORTHCROSS, *et al,*		
Plaintiffs-Appellants,		NO. 14,642
vs.		
THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, *et al,*		
Defendants-Appellees.		

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF SHELBY

The affiant, William D. Galbreath, is President of the Board of Education of the Memphis City Schools and served in such capacity during August, September and October, 1961, when the Memphis City Schools were desegregated under the Tennessee Pupil Assignment Law; that affiant had full knowledge of the proceedings of the Board of Education, its staff and its counsel, during the desegregation hearings; that parents of forty-six (46) first grade children made application to transfer to a school other than that to which said children had been assigned; and that thirty-eight (38) of these first grade applicants were Negro pupils seeking transfer to a school theretofore attended by white students, four of the applications were for white pupils seeking transfer to a school theretofore attended by white pupils and four of the applications were abandoned.

Affidavit of William D. Galbreath

Affiant further states that the Tennessee Pupil Assignment Law was applied without discrimination to both the white and Negro pupils; that identical tests were administered to them in racially desegregated testing rooms; that achievement or intelligence tests were administered to all first grade applicants for transfer because the students were entering the system for the first time and the Board of Education had no records reflecting this information with respect to these students; that achievement or intelligence tests were not administered to the numerous applicants for transfer in grades two (2) through twelve (12) for the reason that said upper grade applicants had been tested in previous years and their records were complete in that respect; and that hearings were likewise conducted under the Tennessee Pupil Assignment Law for the upper grade transfer applicants.

Finally, affiant states that the transfer applications of thirteen (13) of the thirty-eight first grade Negro pupils were granted; that all four (4) of the applications by white pupils were denied; and that affiant reiterates the Board of Education's position that the tests and proceedings conducted with reference to all first grade transfer applicants were applied and held on a racially non-discriminatory basis.

Respectfully submitted,
/s/ William D. Galbreath

Personally appeared before me, a Notary Public in and for said County and State, WILLIAM D. GALBREATH, who makes oath that he is president of the Board of Education of the Memphis City Schools and that the foregoing statement is true.

WITNESS my hand and seal this 7th day of May, 1962.

/s/ Jack Petree
Notary Public

My commission expires:
July 7, 1965

Certificate of Service

Copy of the foregoing Affidavit served on A. W. Willis, Jr. Esq., R. B. Sugarmon, Jr., Esq. and Miss Constance Mobley, Attorneys for Plaintiffs-Appellants, this 7th day of May, 1962

/s/ Jack Petree

No. 14642

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DEBORAH A. NORTHCROSS, ET AL.,
Plaintiffs-Appellants,

v.

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, ET AL.,
Defendants-Appellees.

ORDER

Before: CECIL, WEICK and O'SULLIVAN, Circuit Judges.

It is hereby ordered that the opinion in this case, dated March 23, 1962, be amended by striking the words "which the white children did not have to take" from the second full paragraph, on page 10.

/s/ Lester L. Cecil
Circuit Judge

Tennessee Pupil Assignment Law

49-1741. **Assignment of pupils by board of education.**—The board of education of each county, city and special school district, with respect to the schools under its jurisdiction, is authorized and required to provide for the enrolment in a public school of each child who is eligible for enrolment within the schools of said county, city or special school district. Except as otherwise provided by §§ 49-1741—49-1763, the authority of each and every local school board in the matter of enrolment of pupils within its county, city or special school district shall be full and complete and its decision as to the enrolment of any pupil in any such school shall be final. No pupil shall be enrolled in, admitted to, or entitled or permitted to attend any public school in such county, city or special school district other than the public school to which such pupil may be assigned pursuant to the rules, regulations and decisions of said board of education. Subject to review as provided in §§ 49-1748—49-1763, the board of education may exercise the powers and duties granted by §§ 49-1741—49-1763 directly or may delegate its authority to other persons employed by the board under such rules and regulations as the board may adopt, subject to final decision and action by the board itself. [Acts 1957, ch. 13, § 1.]

49-1742. *Factors considered in determining assignment of pupils.*—In determining the particular public school to which pupils shall be assigned, the board of education may consider and base its decision on any one or more of the following factors: available room and teaching capacity in the various schools; the geographical location of the place of residence of the pupil as related to the various schools of the system; the availability of transportation

facilities; the effect of the enrolment on the welfare and best interests of such pupil and all other pupils in said school as well as the effect on the efficiency of the operation of said school; the effect of the admission of new pupils upon established or proposed academic programs; the suitability of established curricula for particular pupils; the adequacy of the pupil's academic preparation for admission to a particular school and cirriculum; the scholastic aptitude and relative intelligence or mental energy or ability of the pupil; the psychological qualifications of the pupil for the type of teaching and associations involved; the effect of admission of the pupil upon the academic program of other students in a particular school or facility thereof; the effect of admission upon prevailing academic standards at a particular school; the psychological effect upon the pupil of attendance at a particular school; the effect of any disparity between the physical and mental ages of any pupil to be enrolled, especially when contrasted with the average physical and mental ages of the group with which the pupil may be placed; the sociological, psychological, and like intangible social scientific factors as will prevent, as nearly as possible, a condition of socioeconomic class consciousness among the pupils; the possibility or threat of friction or disorder among pupils or others; the possibility of breaches of the peace or ill will or economic retaliation within the community; the home environment of the pupil; the maintenance or severance of established social and psychological relationships with other pupils and with teachers; the choice and interests of the pupil; the sex, morals, conduct, health and personal standards of the pupil; the request or consent of parents or guardians and the reasons assigned therefor; together with any and all other factors

which the board may consider pertinent, relevant or material in their effect upon the welfare and best interest of the applicant, other pupils of the county, city or special school district as a whole and the inhabitants of the county, city or special school district. [Acts 1957, ch. 13, § 2.]

49-1743. **Continued attendance until graduation.**—Each school child who has prior to January 25, 1957 attended a public school and who has not moved from the county, city or special school district in which he resided while attending such school shall attend the same school which he has attended until graduation therefrom unless enrolled in a different school by the local board of education pursuant to the provisions of §§ 49-1741—49-1763. [Acts 1957, ch. 13, § 3.]

49-1744. *Rules and regulations.*—In the exercise of the authority conferred by §§ 49-1741—49-1763, the boards of education may prescribe general rules governing admission to schools within their jurisdiction, subject to the provisions of §§ 49-1741—49-1763, and may adopt such other reasonable rules and regulations as in the opinion of the board shall best accomplish the purposes of such section. [Acts 1957, ch. 13, § 4.]

49-1745. *Time for filing applications for admission or transfer.*—The board is authorized to prescribe a date reasonably in advance of the opening of school for the filing of applications for admission or transfer and to refuse to consider applications filed after such date for the ensuing school year. [Acts 1957, ch. 13, § 5.]

49-1746. *Investigation and surveys—Advisory committees—Tests.*— In determining and applying the general rules for the admission of children to the public schools, the board through its officers and employees may make investigations, conduct surveys and create and appoint advisory committees and study groups to assist in surveys and plans with respect to the enrolment of children within its jurisdiction, and may conduct such tests as it may consider advisable in determining the schools to which pupils shall be assigned or the grades, classes or courses of study within a school to which pupils should be assigned or enrolled. [Acts 1957, ch. 13, § 6.]

49-1747. *Notice of assignment.*—In assigning students, the board of education may give individual written notice of assignment on each pupil's report card or by written notice by any other feasible means to the parent, or may give notice by publication. [Acts 1957, ch. 13, § 7.]

49-1748. *Dissatisfaction with assignment—Application for hearing on transfer.*—Both parents, if living, or the parent, guardian or legal custodian of any child so assigned who is dissatisfied with the assignment of such child may, within ten (10) days of the order making said assignment, make written application to the board for a hearing before the board as to the reasonableness of said assignment and asking for a transfer to another school. Said application for transfer shall state the specific reasons why the applicant contends that the child should not attend the school assigned and the specific reasons why the child should be assigned to the different school named in the application. Upon the receipt of such application

for hearing, the board shall set a date for the hearing of the protest and such hearing shall be held within a reasonable time after receipt of the written application for the hearing. Written notice of the date and place of the hearing shall be given by the board or its secretary to the parents, guardian or legal custodian of such child by mailing a notice of hearing to said party at his last known mailing address at least ten (10) days before the date of the hearing. The applicant shall be entitled to appear in his own behalf or to be represented by counsel upon the hearing of such protest. [Acts 1957, ch. 13, § 8.]

49-1749. *Decision of board on protest—Writte norder.*—The board shall consider and decide each individual case separately on its merits; and its decision shall be based upon a consideration of the factors set forth in § 49-1742. Within a reasonable time after the completion of the hearing, the board shall enter a written order either granting or denying the protest. A copy of the order and the findings of the board shall be mailed by the board or its secretary to all parties appearing at the hearing at their last known mailing address within five (5) days from the date of such order. [Acts 1957, ch. 13. § 9.]

49-1750. *Evidence at hearings.*—In conducting such hearings as provided in §§ 49-1741—49-1763, the board shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonable prudent men in the conduct of their affairs; provided, however, that the board shall give effect to the rules of privilege recognized by law; and provided further that the board may exclude in-

competent, irrelevant, immaterial or unduly repetitious evidence. All evidence including records and documents in the possession of the board of which it desires to avail itself, shall be offered and made a part of the record in the cause. No factual information or evidence other than that contained in the record shall be considered in the determination of the cause. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. Each party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. The board may take notice of judicially cognizable facts. In addition to the oral testimony of witnesses appearing at the hearing, the testimony of witnesses may be taken by deposition or upon interrogatories. [Acts 1957, ch. 13, § 10.]

49-1751. *Administration of oaths—Subpoenas—Compelling obedience—Witnesses' fees.*—In conducting hearings under §§ 49-1741—49-1763, the board shall have the power to administer oaths and affirmations and the power to issue subpoenas in the name of the state of Tennessee to compel the attendance of witnesses and the production of documentary evidence. All such subpoenas shall be served by the sheriff or any deputy of the county to which the same is directed; and such sheriff or deputy shall be entitled to the same fees for serving such subpoenas as in the case of the service of subpoenas from a court of record of the state. In the event any person fails or refuses to obey a subpoena issued hereunder, any court of record of this state within the jurisdiction of which the hearing is held or within the jurisdiction of which said person is found or resides, upon application by the board or its representatives, shall have the jurisdiction to at-

tach the body of such person and compel him to appear before the board and to give testimony or produce evidence as ordered; and any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof.

Witnesses shall be entitled to the same fees as provided by law for witnesses in courts of record, which fees shall be paid as a part of the costs of the proceeding. [Acts 1957, ch. 13, § 11.]

49-1752. *Board may employ counsel—Evidence and cross-examination by board members.*—In conducting hearings under §§ 49-1741—49-1763 the board may employ counsel as provided in § 49-1762 to appear at and participate in such hearings behalf of the board. The board or its counsel may introduce evidence in support of the actions of the board. Members of the board may cross-examine any witness testifying at such hearings. [Acts 1957, ch. 13, § 12.]

49-1753. *Burden of proof.*—The burden of proof in all proceedings under §§ 49-1741—49-1763 shall be upon the person challenging the action of the board. [Acts 1957, ch. 13, § 13.]

49-1754. *Hearing conducted by examiners.*—The board of education is authorized to designate one or more of its members or one or more competent examiners to conduct any such hearings, and to take testimony, and to make a report of the hearings to the entire board for its determination. Before the board shall enter a final order in such cases the members thereof shall personally consider

the entire record and the board shall make its decision on the basis thereof. [Acts 1957, ch, 13, § 14.]

49-1755. *Petition for judicial review.*—Both parents, if living, or the parent, guardian or legal custodian of a child so assigned by final order of the board, may, at any time within thirty (30) days from the date of the final order, obtain a judicial review of the order by filing a petition for review in the chancery court of the county where said board of education is located. The petition shall state briefly the issues involved in the cause, the substance of the order of the board, and the respects in which the petitioner claims the order of the board is erroneous, and pray for an accordant review. The petition shall be addressed to the presiding chancellor and shall name the board of education as defendant. The petitioner shall file with his petition a copy of the decision of the board of education and a transcript of the proceedings and evidence before the board, authenticated by the person presiding over the hearing. In the event a copy of the transcript is not available within the period provided herein for the filing of such petitions, the court may, upon application of the petitioner within the time prescribed herein, grant an extension of the time within which said petition may be filed.

The petitioner shall give bond for costs as in other chancery suits or oath of paupers in lieu thereof.

Upon the filing of such petition the clerk and master shall immediately send by registered or certified mail to the chairman of the board, a notice of the filing of said petition and a certified copy thereof. In lieu of notice by

registered or certified mail, subpoena to answer may be personally served on each defendant as in other chancery cases. [Acts 1957, ch. 13, § 15.]

49-1756. *Effect of petition for review.*—The filing of such a petition for review shall not suspend or supersede an order of the board; nor shall the court have any power or jurisdiction to suspend or supersede an order of the board issued under §§ 49-1741—49-1763 prior to the entry of a final decree in the proceeding, except that the court may suspend such an order upon application by the petitioner made at the time of the filing of the petition for review, after a preliminary hearing, and upon a prima facie showing by the petitioner that the board has acted arbitrarily, fraudulently or unlawfully to the manifest detriment of the child who is the subject of the proceeding. [Acts 1957, ch. 13, § 16.]

49-1757. *Time for making defense—Hearing before court—Evidence.*—The defendants named in said petition shall make defense as in other chancery cases within thirty (30) days from the date of the filing of said petition, unless the time be extended by the court. Amendments may be granted as in other chancery proceedings. The cause shall stand for trial and shall be heard and determined at the earliest practicable date and shall be heard exclusively upon the proof introduced before the board contained in the transcript. No person shall be authorized to offer or introduce new or additional evidence before the court, except that in cases of alleged irregularities in procedure before the board, not shown in the record, testimony thereon may be taken before the court; provided, however, that if, before the date set for the hear-

ing, application is made to the court for leave to present additional evidence going to the merits of the cause, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the board, the court may order that the additional evidence be taken before the board upon such conditions as the court deems proper. Upon hearing such additional evidence, the board may modify its findings and decisions by reason thereof and shall file with the court, to become a part of the record, the additional evidence together with any modifications or new findings or decisions. [Acts 1957, ch. 13, § 17.]

49-1758. *Decision of chancery court.*—Upon the hearing, the court may dismiss the petition or vacate the order complained of in whole or in part; but, in case the order of the board is wholly or partly vacated, the court may, at its discretion, remand the case to the board of education for further proceedings not inconsistent with the decree of the court. The findings of fact of the board of education shall be considered final, if supported by substantial evidence on the entire record. The review of the chancery court as herein provided for shall not extend further than to determine whether the board of education has acted illegally, fraudulently or in excess of its jurisdiction, including a determination of whether the order of the board under review violated any right of the aggrieved party under the Constitution of the United States or the Constitution of Tennessee.

The chancellor shall reduce his findings of fact and conclusions of law to writing and make them a part of the record. [Acts 1957, ch. 13, § 18.]

49-1759. *Appeal from chancery court.*—From the final decree of the chancery court, an appeal may be taken by both parents, if living, or by the parent, guardian or legal custodian of the child in question, or by the board of education to the Court of Appeals or Supreme Court in the same manner and under the same rules as other appeals are taken from final decrees in chancery cases. [Acts 1957, ch. 13, § 19.]

49-1760. *Procedure in chancery cases.*—The rules of pleading, practice and procedure ordinarily followed in chancery cases will be followed in the review of orders of boards of education hereunder, except as otherwise provided in §§ 49-1741—49-1763. [Acts 1957, ch. 13, § 20.]

49-1761. *Parties to proceedings—Each case considered individually.*—Actions for the review of the decisions of the board of education in assigning a child to a school shall be filed and maintained only by both parents, if living, or by the parent, guardian or legal custodian of the child so assigned. The court shall consider and decide each individual case separately on its merits. The assignment of each child shall be considered to be an individual case, and no class actions shall be maintained. [Acts 1957, ch. 13, § 21.]

49-1762. *Employment of counsel, court reporters and other personnel—Expenses.*—Each board of education shall be authorized to employ counsel to represent the board in any matters arising under §§ 49-1741—49-1763, to employ court reporters for the purpose of preserving evidence at hearings conducted under §§ 49-1741—49-1763 and preparing transcripts thereof, and to employ such other

personnel and incur such other expenses as the board may find to be necessary for the efficient administration of §§ 49-1741—49-1763. Any judgments, liabilities and court costs adjudged against the board of education or the members thereof, the fees of attorneys employed by the board, and any and all other expenses and liabilities incurred under §§ 49-1741—49-1763, shall be the obligation of the county, city or special school district involved, and shall be paid from the funds of such county, city or special school district. [Acts 1957, ch. 13, § 22.]

49-1763. *Board members and agents immune from liability.*—No board of education or member thereof, nor its agents or examiners, shall be answerable to a charge of libel, slander or other action, whether civil or criminal, by reason of any finding or statement contained in the written findings of fact or decisions or by reason of any written or oral statements made in the course of the proceedings or deliberations provided for under §§ 49-1741—49-1763. [Acts 1957, ch. 13, § 23.]

IN THE

SUPREME COURT OF THE UNITED STATES

THE BOARD OF EDUCATION OF THE CITY OF MEMPHIS, Etc., Et Al,

Petitioners,

Vs.

DEBORAH A. NORTHCROSS, ET AL, MINORS, by T. W. NORTHCROSS, Sr., their father and Next Friend, Et Al,

Respondents.

No. 1022

MOTION OF MEMPHIS CITIZENS' COUNCIL, A CORPORATION, OF MEMPHIS, TENNESSEE, FOR LEAVE TO FILE A BRIEF AMICUS CURIAE, IN THE ABOVE STYLED CAUSE.

&

AMICUS CURIAE BRIEF, OF MEMPHIS CITIZENS' COUNCIL, A CORPORATION, OF MEMPHIS, TENNESSEE.

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IN THE

SUPREME COURT OF THE UNITED STATES

THE BOARD OF EDUCATION OF THE
CITY OF MEMPHIS, ETC., ET AL.,
Petitioners,

Vs.

NORTHCROSS, ET AL.,
Respondents.

MOTION OF MEMPHIS CITIZENS' COUNCIL, A CORPORATION, OF MEMPHIS, TENNESSEE, FOR LEAVE TO FILE A BRIEF AMICUS CURIAE, IN THE ABOVE STYLED CAUSE.

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the Memphis Citizens' Council, a corporation, of the City of Memphis, Shelby County, Tennessee, and respectfully moves this Court, pursuant to Rule 42 of the Rules of this Court, for leave to file the accompanying brief in this case amicus curiae. Respondents ignored Movant's request for consent to file its following brief, and petitioners refused contending their consent would "weaken" their appeal! Movant's and its substantial membership's interest and reason for asking leave to file such brief in this case are, to-wit:

Movant is a corporate civic organization existing under laws of the State of Tennessee. Each of its members are public school taxpayers with respect to maintenance of the

public school system of said City. Many are parents of white students attending said public schools, which school system has been conducted, heretofore for many years, on a segregated basis as to students of the white and Negro races, under laws and the Constitution of Tennessee. Such basis of segregation has steadily become more important because of the rapid increase in the number of Negro students, now risen to about 44 per cent of the total students attending said public schools. All members of movant seriously oppose Negro with white student integration, in the public schools of Memphis, correctly they consider.

In view of said very high percentage of Negro students related, the adjudication rendered in this case by the Sixth Circuit Court of Appeals on March 23rd, 1962 now concerned, which has the effect of requiring complete Negro with white student integration in said schools, is earnestly considered as a compulsion of dire and calamitous detriments to and against the majority white race infant and minor students affected, and to their coming descendants, now being either too young and inexperienced or nonexistent, to defend or protect themselves therefrom, being entirely dependent upon the final determination in this case, including this Court's consideration of detriments to them, as would be presented to this Court by movant's brief to this Court on their behalf, in its nature as a guardian or protector of infants, minors, subject to its jurisdiction in this case.

It is respectfully said, that any final determination in this case without this Court's consideration of said detriments, which are sociologically and in fact indisputable, even to the extent of being reasonably contemplated to threaten and destroy white racial integrity in the United States, that any such failure would so abandon the white

progeny of the United States to the immutable result of racial mongrelization and corruption of the now white race with the Negro in this nation, by the evil social experiment of such racial school integration.

It is respectfully stated, that as this Court has only adjudicated, to date, in its Brown School Case decision, 347 U. S. 483, on detriments to the minority of Negro public school students in decreeing racial desegregation of or racial integration of public schools, that it would seem that fairness requires a further judicial examination in this connection by this Court, extended to consideration of the welfare of the children, and their descendants, of the white parents, mothers and fathers, composing the great majority of the total population of the United States. Movant says respectfully, that any closing of the judicial doors in regard to further consideration of said question would amount to the maintenance of unilateral adjudication only, because detriment specified in said Brown School Case decision relates to only the Negro minority race, ignoring detriments to be caused by racial school integration to the white majority race of the United States so involved, its students, fathers and mothers, and offspring in the future.

Said matters will not be adequately, or otherwise, presented in this cause by the parties thereto.

Movant respectfully requests this Court that it be allowed the same opportunity to file and have considered in this cause its following amicus curiae brief, like this Court allowed such briefs to be filed and considered in its determination of the similar, former and earlier case decided by it on May 17th, 1954, namely, that of Brown v. Board of Education, 347 U. S. 483.

Movant respectfully avers, that the future welfare of the United States may be nurtured only by the kind and character of its people, namely, the present and coming generations now so vitally affected and concerned, and in such interest and outlook to the future ahead, movant respectfully suggests that this Court be agreeable to let this issue be further developed, in truth and in fact by a full consideration, including by the amicus curiae brief movant respectfully prays this Court to allow it to file herein, and be considered in the final determination of this case.

Respectfully submitted,

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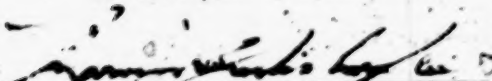

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IN THE

SUPREME COURT OF THE UNITED STATES

THE BOARD OF EDUCATION OF THE
CITY OF MEMPHIS, ETC., ET AL,

Petitioners,

vs.

No.

NORTHCROSS, ET AL,

Respondents

AMICUS CURIAE BRIEF, OF MEMPHIS CITIZENS' COUNCIL, A CORPORATION, OF MEMPHIS, TENNESSEE

OPENING STATEMENT

Pursuant to leave granted by this Court, to Memphis Citizens' Council to file this brief, amicus curiae, it respectfully makes the following opening statement, to-wit:

The Sixth United States Circuit Court of Appeals, at Cincinnati, Ohio, rendered its decision in this case on March 23rd, 1962, F2d , in which rehearing has since been duly denied, which decision has the effect of decreeing and forcing the racial integration of Negro with white students in the public schools of Memphis, Shelby County, Tennessee. The said decision, page thereof, finds and recites "There are approximately 100,000 pupils in the Memphis school system, 44 per cent of whom are Negroes." Therefore, such decreed integration, if imposed, would bring about the compelled attendance and daily association of 22 Negro students with 28 white students within school rooms accommodating a total of 50 pupils or 18 Negro students with 22 white students within school rooms accomodating a total of 40 pupils. Under such circumstances, said racial integration would be substantial and material

to the issue of racial integration of the public schools at Memphis, and such design now raises in this case the sociological effects related, with respect to the substantial majority of white students so affected at Memphis (and as so concerned elsewhere in the United States) as was raised by this Court in its 1954 first Brown School Case decision, 347 U. S. 483, and as was adjudicated therein with unilateral consideration of only the minority of Negro school students related, namely, the so adjudged detriments to them by racial segregation of pupils in public schools without any expressed consideration or adjudication with respect to the detriments resulting to the great majority of white students, by integration of Negro with white students in public schools together in such close daily and continuing association throughout all the future.

Said Brown School Case so considers and adjudges, as follows, to-wit:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children."

Brown v. Board of Education, (May 17th, 1954) 347 U. S. 483, (494), 74 S. Ct. 686, 98 L. Ed. 873, 38 ALR2d 1180.

This brief, in the same nature of sociological content, and composition, addresses said subject in such same way as this Court has done, itself, in its said Brown School Case decision. It being respectfully understood, that by such kind of consideration and adjudication by this Court undoubtedly means that a like approach is now in order for notice by this Court in this case having the same kind or type of issue and matter concerned as was concerned in said Brown School Case. Except, now, herein, the sociology of vital interest cited and advocated stands on the side of

and supports the overwhelming majority affected, to-wit: the white children public school students, and those to follow them, in attendance at the public schools at Memphis, and elsewhere throughout our country the United States, whose welfare and future white racial integrity it is earnestly and respectfully pointed out was completely ignored and adjudged against by and under the decision in said Brown School Case.

BRIEF AND ARGUMENT.

Now, by said leave granted by this Court, it is respectfully stated, as follows, to-wit:

That the contents hereof are bottomed on the time honored and yet unchanged principle adjudged by this Court, and others, that each occupy the status of guardian, and protector, of infants, minors, falling under their respective jurisdictions and adjudications, defined as follows, to-wit:

An infant is under the protection of courts of both law and equity.

> Dexter v. Hall, 82 U. S. 9, (21), 21 L. Ed. 73.

Minors are wards of the court and their rights must be guarded jealously.

> Montgomery v. Erie R. Co., 3 CCA 97 F2d 289, (292).

> In deference to common experience, there is general recognition of the fact that many persons by reason of their youth are incapable of intelligent decision, as the result of which public policy demands legal protection of their legal rights.
>
> Bonner v. Moran, U.S.C.A. Dist of Col., 126 F2d 121, (122).

The most fundamental, cardinal and highest legal rights of the chief and greatest number of infants, minors and wards of this Court involved now are the white children students attending public schools at Memphis, and the vast number of them constituting the overwhelming majority of the total of all children students attending public schools of this country, the United States, whose such rights include the right of personal security. As appears below, their such right is now threatened with destruction and the grossest violation by the forcing of racial school integration on and against them. Their right to personal security may be defined, as follows, to wit:

The right of personal security is one of the natural rights (1); it consists in each person's right to legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation, (2); and such right is guarded by various provisions of the federal constitution, derived in part from Magna Charta and other charters of English liberty, and reinforced by additional and more specific injunctions, (3). The Fourteenth Amendment to the U. S. Constitution guarantees the right of personal security from abridgment even by the states (4) as well as by the federal government (5). Any *legislation* or *acts* in violation of said right are null and void (6), except where interposed in the interests of common safety and welfare, (7). The courts must ever be watchful to protect the personal rights guaranteed by the federal constitution, (8).

(1) 16 C.J.S. (Const. Law) Sec. 205, p. 1014, note 14.

(2) 12 C.J. (Const. Law) Sec. 449, p. 941, note 36;
16 C. J. S. (Const. Law) Sec. 205, p. 1015, note 17.

(3) 12 C.J. (Const. Law) Sec. 449, p. 941, note 37;
2 Kent Comm. Sec. 12;

16 C.J.S. (Const. Law) Sec. 205, p. 1014, note 15; U. S. v. Wheeler, 149 F. Supp. 445, (451), holding:

The court in speaking of the constitutional right of "security of person" refers thereto as being "the bulwark of constitutional protection upon which rests the foundation of all our freedoms, and must be held sacrosanct in the application of the law. To deviate or compromise these sacred rights is to imperil our basic freedoms." And "that constitutional provisions for the security of person should be liberally construed. Boyd v. United States, 116 U. S. 616, 635, 6 S. Ct. 524, 29 L. Ed. 746; United States v. Lipshitz, 132 F. Supp. 519." (Page 4514).

(4) 16 C.J.S. (Const. Law) Sec. 205, p. 1014, note 15.5.

(5) Hague v. Committee, etc., 101 F.2d 774, (788).

(6) 16 C.J.S. (Const. Law) Sec. 205, p. 1015, note 19; 16 C.J.S. (Const. Law) Sec. 199, p. 977, note 35.

(7) 16 C.J.S. (Const. Law) Sec. 205, p. 1016, note 22.50; Alabama State Fed. of Labor v. McAdory, 18 So. 2d 810, (822), 246 Ala. 1, cert. dism. 325 U. S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725.

(8) 16 C.J.S. (Const. Law) Sec. 199, p. 976, note 32, citing:

Byars v. U. S., 273 U. S. 28, (32), 47 S. Ct. 248, 71 L.Ed. 520, holding:

"Constitutional provisions for the security of person are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any *stealthy encroachments thereon.*' Boyd v. United States, 116

U. S. 616, 635; Gouled v. United States, 255 U. S. 298, 304.' " (Page 32).

JUDICIAL NOTICE

It is now respectfully noted, that this Court, in arriving at its sociological decision in said Brown School Case did so by its judicial notice evident thereby, particularly as appears by note 11 on page 494 of its officially reported content, 347 U. S. at its page 494. Thus, this Court has approved such method and pattern as being proper to pursue in public school racial integration cases, which such use and course in judicial adjudications, of facts noticed for judicial adjudication thereon, from writings of lay character and of the judiciary, is generally authorized under the following citations, to-wit:

Federal court judges, with respect to a matter of a proper subject of judicial notice, may inform himself in such manner as he chooses (1) or as he deems proper, (2). A judge may refer to books or periodicals or public addresses (3), public documents or records of all kinds (4), government publications (5), dictionaries (6), encyclopedias (7) and reports of committees of both House and Senate of the United States, (8).

To aid the court in applying judicial notice, it is proper (for a litigant) to call attention to the place where the fact or law may be found which is to be judicially noticed, (9).

It is the duty of the judge to pursue inquiries sufficient to make his knowledge real as far as possible, (10).

(1) Strickland v. Humble Oil & Ref. Co., CCA 140, F2d 83, (86), cert. den. 323 U. S. 712, 65 S. Ct., 89 L.Ed. 570.

(2) Adam Hat Stores v. Lefco, 134 F2d 101, (104).

(3) 23 C. J. (Evid.) Sec. 2001, p. 170, note 52;
31 C. J. S. (Evid.) Sec. 12, p. 517, note 15.

(4) 23 C. J. (Evid.) Sec. 2001, p. 169, note 39;
31 C. J. S. (Evid.) Sec. 12, p. 517, note 11.

(5) 23 C. J. (Evid.) Sec. 2001, p. 170, note 48.

(6) 23 C. J. (Evid.) Sec. 2001, p. 170, note 49;
31 C. J. S. (Evid.) Sec. 12, p. 517, note 12.

(7) 23 C. J. (Evid.) Sec. 2001, note 50;
31 C. J. S. (Evid.) Sec. 12, p. 517, note 13.

(8) United States v. Aluminum Co. of Am., 1 F.R.D. 71, (76);

Arizona v. California, 283 U. S. 423, (453-4), 51 S. Ct. 522, 75 L. Ed. 1154.

Note:

"—the authenticity of an official document is sufficiently established when a copy of it is offered in evidence which purports to have been printed by authority of the Government"—as when printed by the U. S. Government Printing Office, (p. 73).

United States v. Aluminum Co. of Am., 1 F. R. D. 71, (75).

(9) Turnage v. Gibson, 211 Ark. 268, (270), 200 SW2d 92, citing:
20 Am. Jur. (Evid.) Sec. 52.

(10) 31 C. J. S. (Evid.) Sec. 12, p. 517, note 8.

Effect of judicial notice, when taken: the taking of judicial notice has the effect to relieve one of the parties to a controversy of the burden of introducing evidence thereon.

Ohio Bell Tel. Co. v. Pub. Utl. Comm. of Ohio, 301 U. S. 292, (301), 57 S. Ct. 724, 81 L. Ed. 1093.

And, of course, "courts take judicial notice of matters of common knowledge."

Ohio Bell Tel. Co. v. Pub. Utl. Comm. of Ohio, 301 U. S. 292, (301), 57 S. Ct. 724, 81 L. Ed. 1093.

And, federal courts may take judicial notice of public press items.

Borders v. Rippy, (1960) 184 F. Supp. 402, (420).

In accordance with the authority cited hereunder, this Court is respectfully requested to takes judicial notice herein, in this proceeding, of which all opposing parties in this case are hereby notified thereof.

Wigmore on Evidence, Vol. IX, Sec. 2568, p. 536.

More particularly, with respect to the nature of this case and its subject-matter, the following is cited on the subject of judicial notice as being closely related in this case, as follows, to-wit:

The general rule is that it is the duty of a court to take judicial cognizance of all matters affecting the health, and social (1) or political welfare of the public (2), which are in accord with general or scientific knowledge, (3).

(1) 20 Am. Jur. (Evid.) Sec. 100, p. 113, notes 15 & 16, citing:
Jacobson v. Massachusetts, 197 U. S. 11, (35), 49 L. Ed. 643, 21 S. Ct. 358.

(2) 20 Am. Jur. (Evid.) Sec. 100, pps. 113-114, note 17, citing:
United States v. Hamburg, Etc., 239 U. S. 466, (474-5), 60 L. Ed. 387, 36 S. Ct. 212.

(3) 20 Am. Jur. (Evid.) Sec. 100, p. 114, note 18, citing: Ohio L. Ins. &T. Co. v. Debolt, (U.S.) 16 How. 416, 14 L. Ed. 997.

SOCIOLOGY DEFINED

As the subject of "sociology" is now concerned, as it was the foundation and basis of said Brown School Case decision its definition is given, to-wit:

> Sociology is the science of the origin and evolution of society. — Its subject matter is variously conceived to be society, culture, social institutions, collective behavior, or social interaction—the study of the associated life of man.
>
> Webster International Dictionary, 2nd Ed., pps. 2387-8.

Or, more briefly defined:

> Sociology is the science of the constitution, evolution, and phenomena of human society, (1). Social science, (2).
>
> (1) New Handy Webster Dictionary, page 318.
>
> (2) Webster's Home, School and Office Dictionary, pages 477-478.

It is respectfully now said, that it conclusively appears by above cited authorities that in such a case as this one is, that is, concerning public school racial integration, that a very broad area with respect to sociology related is properly opened for attention, reference, consideration and further adjudication in such connection, on the question of whether, or not, any particular public school system should be forced, and compelled, to racially integrate its schools. This sociological character of such consideration, by judicial notice, as has been done by this Court in its said

Brown School Case decision has, thereby, set such course and criterion to be followed now, and herein, which will be earnestly sought to be duplicated hereinafter, but, this time, as distinguished from the earlier instance in said decision of May 17th, 1954, in the crying need of defense and in protection of the majority of white children, public school students, and their descendants over whose heads, it is respectfully stated, hangs a "sword of Damocles" because of said decision because of the irrefutable, diabolical and almost unspeakable detriments they will certainly suffer, fatally in their integrity of being and not thereafter subject to recall, which will ensue unless they are shielded and same is prevented by this Court, in how it decides this case. What this Court does in this case, it is further respectfully stated, will either condemn and sentence them to or save them, and their descendants in the future, from the immutable destructive sociological effect of such close and continued social daily association, together, upward from the earliest primary school grades for years, namely, myriads of them in amalgamation and consequent corruption of body, mind and soul of their progeny, by presently so influenced and induced racial intermarriage and mongrelization of the white and Negro races, into a grotesque being neither white or black. As their guardian, it is respectfully said, this Court occupies a highly protective or dangerous position in this case with respect to the overwhelming majority of the white children now involved, and to their continuing offspring for all time to come in this country, the United States, which as is common knowledge is one of only a few white nations left on this earth because of the racial integrations and amalgamations of the past to date. This is outstanding in the history of mankind in the World. Therefore, the most gripping and important question now is—what, in the name of the white

children, their white mothers and fathers who, together constitute the overwhelming majority of our total population—is this Court going to do, decree, in this case?

In reflecting an answer to said question, it is most respectfully stated, that this Court clearly occupies a highly protective or a very dangerous position by the way of answers, with respect to the overwhelming majority of white students related and to the great majority of white population of the United States, and their descendants, yet to come. It is also most respectfully said, that on the subject of racial (Negro with white) forced public school integration that the time has come for the truth to be exposed and told, to wit: unfeelingly, that this brief and argument is like, in the nature of, a heart to heart talk by a condemned and sentenced innocent, with his or her possible executioneer, so to speak, whose eyes and understanding it is honestly and earnestly sought to be opened and hand stayed while life remains furnishing the opportunity for clemency before eternal extinction or destruction is imposed and executed. It is respectfully submitted, that any reasonably suspecting to be garroted, is in are entitled to be heard. Such "any" is the majority present white population, and progeny, standing in the shadow of the "guillotine," figuratively, of corruption and debasement by Negro with white racial integration and race-mixture to be influenced and assured by any decision or fiat deceiving both into the false belief that such mongrelization is approved and to be effectuated in this country, the United States, as being sanctioned by its Constitution construed sociologically. "O justice, how many crimes have been committed in thy name!" Under such premise, it is respectfully considered necessary and proper for it to be stated that this brief and argument, within the bounds therefor, opposes and critizies the contents and rationale of said

Brown School Case decision forcing racial public school desegregation by compelling racial integration thereof, under the following authorities, to-wit:

A lawyer may criticize court decisions in a fair and respectfully manner, (1). The right of lawyers and others to criticize in a legitimate manner the conduct and rulings of judges is not to be questioned, where a judicial officer is not subjected to scandalous and libelous charges and indignities, (2). Any attorney, as well as any other citizen has the right except by false and scurrilous matters, to criticize the Courts and their decisions, (3). Attorneys have the widest latitude in differing with, and critizing the opinion of the courts, it is only when they resort to misrepresentations and unwarranted assaults upon the courts whose officers they are, that they violate their duty and obligation, (4).

(1) In re Ades, 6 F. Supp. 467, (481).

(2) Cobb v. United States, 9th CCA, 172 Fed. 641, (645).

(3) Kentucky State Bar Ass'n. v. Lewis, (Ky.) 282 S.W.2d, 321, (326), citing:
Thatcher v. United States, 6 Cir., 212 F. 801.

(4) 6 C. J. (Atty. & Client) Sec. 54, p. 594, note 93, cited with approval by:
In re Humphrey, (Sup. Ct. of Calif.), 163 Pac. 60, (62).
7 C. J. S. (Atty. & Client) Sec. 23, p. 752, note 79.

Stated, as reported, before the American Bar Association's Assembly, in session in New York City, applause greeted the following words there argued by Honorable Louis C. Wyman, attorney general of New Hampshire, quot-

ing, "it is the duty of every lawyer to speak out at any time against decisions with which they disagree, without impugning the integrity of members of the court," see "editorial "Court And Criticism," Memphis Commercial Appeal, issue of July 24th, 1957.

We next respectfully proceed to present, under one or other of the authorities on judicial notice authorizing same as are above cited or as hereinafter cited, the matters of sociology indisputably supporting the white race majority at Memphis, and elsewhere, affected against forced racial (Negro with white students) public school desegregation or integration therein.

THE HORRIBLE AND DISGUSTING DETRIMENTS THAT SOCIOLOGY SHOWS WILL ENSUE TO THE MAJORITY OF WHITE STUDENTS NOW IN PUBLIC SCHOOLS AND TO THEIR PROGENY TO FOLLOW THEM, BY FORCED NEGRO WITH WHITE STUDENT INTEGRATION IN PUBLIC SCHOOLS TOGETHER.

It is a matter of historical fact, of common knowledge, that the United States is now one of only a few predominatingly white nations on Earth, in this World, left, as the result of racial integrations, amalgamations and assimilations of the past, to date. With every respect, let it be firmly noticed that it may be said without the possibility of well grounded dispute, that in view of the United States being a democracy, a government by the people collectively by elected representatives, a republic, controlled by a majority of its citizens who happen heretofore, and now, to be of the white race, that it necessarily follows that the Brown School Case decision favoring the Negro minority only, at the expense of the white majority, is not

sound and under such circumstances, even while garbed in judicial dress it has become to many, reasonably questionable or bewilderingly and honestly suspect or vulnerable, particularly because it ignores said majority of the people so sorely affected thereby, in whom "all sovereignty rests" under the form of government, of the United States. No plausibility or strained composition to the contrary has any competency, in any degree, or truth under the kind, nature and character of the genius of the organization and existence of the government of the United States. This may not be factually or legally gainsaid. Let's now take a well considered look at said decision in said Brown School Case, which is respectfully now referred to as being the most monstruous decision occurring in all history to date, except that of the Sanhedrin convicting and sentencing the mortal body of our Lord, Jesus Christ to death, Mark 14:64, Matt. 27:66 and see: John 19:7 and Luke 22:71, 23:10 & 21-25, all of which Biblical cited contents are proper subjects for judicial notice, under the following authority, to-wit:

Biblical literature may be resorted to by federal courts for information:

Baker v. F. A. Dunscombe Mfg. Co.,
146 Fed. 744 (747), 77 CCA 234, so cited by:
20 C. J. (Evid.) Sec. 2001, p. 170, note 52 (b).

The question is respectfully posed, why is said Brown School Case decision monstruous?

Respectfully, because it, in view and consideration of indisputable sociological principles, sentences the majority young of the white race attending public school at Memphis, and elsewhere, to an admixture and mongrelization with the Negro race, being a destruction and death to the present and future integrity of their white race bodies,

being now pure biologically and elsewise members of the white race, constituting a gross violation of their highest cardinal right of security in person now, and hereafter. This is as clear as the noon day sun, and is not subject, it is respectfully said, to valid dispute—even officials of the NAACP well know and declaim that such Negro racial admixture and mongrelization will, and is designed to be brought about, by such racial school integration as now evidenced, and cited, as follows, to-wit:

Walter White, as executive-secretary of the NAACP, quoting: "*The association of the races in public schools leads to friendship, love and marriage.*" U. S. News & World Report, its issue of May 28th, 1954.

Albert Kennedy, NAACP lawyer, quoting, "*Integration will result in white girls being associated with Negro boys. Naturally, intermarriage will result. We of the NAACP are committed to a program of full integration.*" (Associated Press) in Twin City Sentinel of Winston-Salem, N. C., issue of August 31, 1955.

Forced School Integration In The U. S. A. (1961), pps. 227-228.

Said statements from said NAACP sources are absolutely correct, under the true principles of sociology related, as follows, to-wit:

It may been seen from Professor Richard T. La Piere, professor of sociology, Stanford University, in his book on sociology, 1st edition, third impression, 1946, pages 438 and 440, and footnotes at bottom of pages 438 and 439, that with reference to the subject of assimilation by one race of another and the way of bringing same about, the usual prelude is the acquisition of association by members

of the minority race (the Negro race in this instance) with members of the majority race (the white race in this instance) or through such more formal means as *attendance at schools together* that represent the culture of the majority race group. That the American school system already has, for this reason, been an important factor in the assimilation of many race minorities having attended schools together to date. That the usual mechanism of assimilation is *intermarriage*. That when considerable members of a minority race are involved in the process, *the entire minority group may disappear into the majority group in a few generations*. That the children of different race groups are "cultural hybrids" of a "social status" somewhere between that of one such parent and the other.

Dr. Bogardus, professor of sociology of the University of Southern California, in his book on sociology, its 4th edition, on its page 347, states that if the members and numbers of such "hybrids" grow numerous and finally outnumber the parent groups, *that then the "hybrid" becomes the ruling class!* In such connection, it must be publicly noticed that now, even the government, itself, is contributing, under the name or heading of "welfare" to the multiplying, by leaps and bounds, both within and outside of holy wedlock, of countless Negro bastards, who, no doubt, will follow NAACP leadership in seeking to control, even further, the political destiny of our country which it is respectfully stated is not even good nonsense and will figuratively swamp the United States, if allowed to continue.

Further, from sociology which teaches all its truths to better guide in this life, we have it solemnly opined within the decision of the U. S. District Court, at Dallas, Texas, of May 25th, 1960, in the reported case of Borders v. Rippy, 184 F. Supp. 402, uncontrovertible proof that racial integra-

tion in public schools will result in racial intermarriage and amalgamation of such Negro and white students. Said decision was authored by the Honorable T. Whitfield Davidson, senior judge of the Northern District of said federal district court, sitting at Dallas. The following is now given from that decision, which for such reasons refused to grant the plan submitted by the NAACP at Dallas, for integration of the public schools there, to-wit:

"There will, however, almost certainly arise a problem by this (sought) plan (for racial integration of Dallas schools) that is bound to defeat it as the years progress; and that is in the language of Dr. Nevins: *amalgamation will inevitably follow, in twelve years (of schooling together), adult pupils will be channeled together. An old sage once remarked that your children will marry whomever they associate with, and our army life is proving that fact. This plan of starting with the lower grade . . . is in all probability the most direct and surest route to amalgamation which in the long run is most objectionable of all features of (public school) integration.*—A well recognized author has said: 'Two currents cannot flow side by side down through the centuries without ultimately becoming one.' Since most of the white in the South desire to maintain their *racial integrity*, they would for that reason alone oppose integration in the schools. Dr. Allen Nevins, historian and author, winner of the Pulitzer Prize and for 30 years professor of history of Columbia University, on this subject says: 'At first the fusion will be imperceptible; then it will be perceptible but slow; then it will move with a rush. I could cite a dozen analogies from history to prove that *such a process is inexorable, irrestible. Any sociologist could cite a dozen reasons why it is inevitable.*" (Page 415).

Of course, it is respectfully said, it is an easy matter to

understand the Negro wish, desire, sought for him by the NAACP, and cohorts, to bring about Negro with white race amalgamation, regardless of the bankrupting expense to the white race of any such success. This graphically appears under the following cited sociological facts, to-wit:

"It is usually assumed that COMPANIONS of his own age wield a vital influence in shaping the ADOLESCENT." (1). "Races differ in body, mind (2) and moral standards (3) and with respect to intelligence tests give the Negro a low station compared with most mankind (4) *and show that the success of the Negro's learning* (which includes his education in the public schools) INCREASES with a GREATER PROPORTION OF WHITE ANCESTRY," (5), which is just what said NAACP, the mover in public school integration cases, plans to effectuate, if it can, by compelling general Negro with white racial integration in the United States.

(1) Psychology of Childhood, by Norsworthy & Whitley, page 183.

(2) The Egyptians, 1920-21, page 93.

(3) Same as (1) above, page 228.

(4) Same as (1) above, page 14.

(5) Same as (1) above, page 16.

It is respectfully noted that the affirmative answer to the question of—"Would integrated schools lead to mixed blood?" may properly be judicially noticed within the composition of "Mixed Schools and Mixed Blood," by Herbert Ravenel Sass, distinguished citizen of Charleston, South Carolina, an independent, and an Episcopalian, within the Congressional Record, 1956, some of which is now referred to, to-wit:

"Science has most certainly not proved that all races are equal, much less identical, and, as the courageous geneticist, Dr. W. C. George of the University of North Carolina, has recently pointed out, there is overwhelming likelihood that the biological consequences of white and Negro integration in the South would be harmful. It would not be long before these biological consequences became visible. But there is good hope that we shall never see them, because any attempt to force a program of racial integration upon the South would be met with stubborn, determined and universal opposition. Though secession is not conceivable, persistence in an attempt to compel the South to mingle its white and Negro children in its public schools *would split the United States in two* as disastrously as in the 1860's and perhaps with an even more lamentable aftermath of bitterness.

"For the elementary public school is the most critical of those areas of activity where the South must and will at all costs maintain separateness of the races. The South must do this because, although it is a nearly universal instinct, race preference is *not active in the very young*. Race preference (which the propagandists miscall race prejudice or hate) is *one of those instincts which develop gradually as the mind develops and which, if taken in hand early enough, can be prevented from developing at all*.

"*Hence if the small children of the two races in approximately equal numbers as would be the case in a great many of the South's schools were brought together intimately and constantly and grew up in close association in integrated schools under teachers necessarily committed to the gospel of racial integration, there would be many in whom race preference would not develop.* This would not be, as superficial thinkers might suppose, a good thing, the happy

solution of the race problem in America. It might be a solution of a sort, but not one that the American people would desire. *It would inevitably result, beginning with the least desirable elements of both races, in a great increase of racial amalgamation, the very process which throughout our history we have most sternly rejected.* For although to most persons today *the idea of mixed mating is disagreeable or even repugnant; this would not be true of the new generations brought up in mixed schools with the desirability of racial integration as a basic premise. Among those new generations, mixed marriages would become commonplace, and a greatly enlarged mixed-blood population would result.*

"That is the compelling reason, why the South will resist the mixing of the races in its public schools. It is a reason which, *when its validity is generally recognized, will quickly enlist millions of non-Southerners in support of the South's position.* The people of the North and West do not favor the transformation of the United States into a nation composed in considerable part of mixed bloods any more than the people of the South do. Northern support of school integration in the South is due to the failure to realize its inevitable biological effect in regions *of large Negro population* (as is now currently taking place in cities and communities in the North and West). If Northerners did realize this, their enthusiasm for mixed schools in the South (or in the North) *would evaporate at once.*

"There are other cogent reasons for the white South's stand: the urgent necessity of restoring the Constitution and our Federal form of government before they are permanently destroyed by the (Supreme) Court's usurpation of power; the equally urgent necessity of re-establishing law and precedent instead of SOCIOLOGICAL and

PSYCHOLOGICAL theory as the basis of the Court's decisions (as now adjudged); the terrible damage which racial integration would do to the South's whole educational system, black as well as white.

"As already pointed out, the fear that mixed schools in the South would open the way to racial amalgamation is not a bogey or a smoke screen or a pretense of any kind but the basic animating motive of the white South in resisting the drive of the NAACP and its supporters. The Negro leaders DO WANT RACIAL AMALGAMATION: they not only want the right to amalgamate through legal intermarriages, *but they want that right to be exercised widely and frequently.*

"It is because there (by integrated schools) the adolescent and 'unprejudiced' mind can be reached *that the integrationists have chosen the Southern schools as their primary target; and it is precisely because the adolescent and therefore defenseless mind would there be exposed to brain-washing which it would not know how to refuse that the white South will not operate integrated public schools. If the South fails to defend its young children who are not yet capable of defending themselves, if it permits their wholesale impregnation by a propaganda persuasive and by them unanswerable, the salutary instinct of race preference which keeps the races separate, as in nature, will be destroyed before it develops, and the barriers against racial amalgamation will go down.*

"This is the new and ominous fact which, as was said at the beginning of this article, lurks in ambush, concealed like a viper in the school integration crusade. Success of that crusade would mean *that after three and a half centuries of magnificient achievement under a system of racial*

separation and purity, we would tacitly abandon that system and instead would begin the creation of a mixed American race by the fusion of the two races which, as H. G. Wells expressed it, are at opposite extremes of the human species.

"Many well-meaning persons have suddenly discovered that the tenents of the Christian religion and the professions of our democratic faith compel us to accept the risks of this hybridization. No one who will face up to the biological facts and really think the problem through can believe any such thing or see the partial suicide of the white race in America (and of the Negro race also) as anything other than *a crime against both religion and civilization.*" Said article taken from the Congressional Record just above quoted from, may be found in its entirety, somewhat abstracted form, at pages 42-54 of said book, "Forced School Integration In The U. S. A." (1961), which is a sociological, religious, legal and political composition opposing Negro with white student racial integration of the public schools in the United States, and elsewhere.

It is now respectfully averred that while the just above quoted language from the Sass article is substantially oriented with respect to related racial circumstances in the South, where there is very large Negro population, that it would be like "the very clouds above the mountain peak of absurdity" to apply same only to the situation in the South. This is true, against any valid contention to the contrary, because as a matter of common knowledge all know of the great, and ever daily increasing influx of enormous numbers of Negroes in addition to the millions of them already residing in the North and West of the United States, which is constantly occurring by Negro migration thereto which shift in the residency of Negro population from the South to the North and West, their

communities and cities, is fast acquainting those areas with Negroes and the problems which accompany them, wherever they live. The white population in all such places, and localities, cannot avoid the attendant influences, penalties or hazards so produced, to be suffered and coped with, as for in all the incidental past and at the present, has had to be worked with and endured in the South. The Negro question is no longer indigenous only to or in the South—its now almost a general and is fast approaching a completely general sociological condition, aspect and mien in the United States, at large. The white people of the North and West now, and later, need and will more greatly need as time passes; protection from the Negro hordes which have, and will continue to be born and settle upon them and their communities, as veritable "swarms of locusts or grasshoppers" just as much as the South has had and now has, such same need. It is earnestly prayed, that no one's eyes be closed to this obvious and very real danger, which is presently so apparent in our country, the United States. The issue on the merits, or demerits of forced racial public school integration is no longer a sectional one, it is now a national issue of transcendent importance throughout the United States.

Such national issue now includes and embraces a required consideration of the horrible and terrible *detriment* to the majority white children school students and their descendants, and likewise with respect to their white parents constituting the large majority of the population of our country, the United States, namely, of the procreation of mongrelized, white with Negro mixtures mullattoes, offsprings of Negro and white parents, sociologically induced and produced by forced white with Negro students integrated in public schools together, year after year, which is

a palpable invasion and violation of each of said majority's respective rights to security of their persons, which would never occur otherwise. No argument seems to appear discounting the premise, that people of the white race, or any other race, have the not to be doubted right in connection with their indisputable constitutional right of security in their persons, to procreate after their own kind, free from any *influence* or design to the contrary. Such right also exists under Biblical plan and mandate, under God's grand design in the creation of this World and all on it, namely, that all increase should be after HIS or ITS "kind," Bible, Gen. 1.

It is respectfully stated, that judicial reference may be looked to on the matter of the just above mentioned word "influence," in its meaning as a potency tending to produce effects insensible and invisibly, viz., racial school integration as being potent to produce the effect of racial amalgamation. The above authorities show said effect to be caused by racial school integration and the element of influence is judicially defined as having potency to bring about what it concerns or indicates as being proper or correct, to-wit:

Influence is a subtle agent. It is often potential when its presence is unsuspected. (1). Influence is the act, or process, or the power, of producing an effect without apparent force or direct authority. (2). It arises out of social relations. (3). Influence means to alter or move in respect to character, conduct or the like, to sway, effect, in some subtle or gradual way. (4). In speaking of "social environment" in the sense of same influencing minors to their *defrijment*, the court found in this cited case that their *environment* had that effect upon them; and defined "environment" as meaning—the surrounding conditions, influences, or forces, which influence or modify, and that "social environment"

comprises everything to do with human activity (5) *which, of course, includes the activity of racial school integration.*

(1) Cheney v. Uproe, 166 Ind. 550, 77 N.E. 1041, (1043).

(2) State v. Wren, 333 Mo. 575, 62 SW2d 853, (855).

(3) Burnett v. Smith, 93 Miss. 566, (572), 47 S. 117, (118); Wherry v. Latimer, 103 Miss. 524, (530), 60 S. 563, (565).

(4) State v. Hurd, 5 Wash. 2d 308, 105 P2d 59, (61).

(5) United States v. Amadio, 7th C.C.A. (1954), 215 F2d 605, (611).

Said judicial decisions are in harmony with the principles of sociology related, to-wit:

"In all phases of social and cultural life the influences of environment are potent." With respect to each individual, "The stimuli which plays upon him, especially those in the *early years of his life* determine the direction of his development, decide the nature of his career." With reference to one's mind, quoting, "it develops only in reaction to environing influences, in reaction to its immediate environment and to the intellectual and cultural content which it has built out of its environment. Hence mind always partakes of environment, and any analysis of mind will yield elements of its environment."

Encyclopedia of the Social Sciences, Vol. 6, pages 564-565.

"The habits of children that are the foundations of later sexual purity must be formed and their opposites carefully guarded against."

The Egyptians, 1920-1921, page 249.

"It is usually assumed that companions of his own age wield a vital influence in shaping of the adolescent self."

The Psychology of the Adolescent, by—L. S. Hollingsworth, page 183.

The actual patterns of children's behavior "are decisively shaped by extrinsic conditioning factors through social impress- the structure of their personalities is the result of both intrinsic and extrinsic factors."

Encylopedia Britannica, Vol. 5 page 469.

THE CALAMITY AND MISCHIEF OF NEGRO WITH WHITE AMALGAMATION HAS BEEN COMPETENTLY NOTICED JUDICIALLY AND SOCIOLOGICALLY.

Judicial determination holds that marriages, amalgamation, of the Negro with the white race brings down the superior white race to that of the inferior Negro race.

Wolfe v. Georgia Ry. & Elec. Co., 2 Ga.A. 499, 58 S.E. 899, (901 et sequence).

Cited with approval later, in 1930, by: Atlanta Etc. Co. v. Shipp, 170 Ga. 817, (824), 154 S.E. 243, (246).

This Court holds with respect to Negroes as being of the "African race—black race" "separated from the white by indelible marks" (p. 410) and clearly construes in the case cited hereunder, namely, when then considering language in the Declaration of Independence now so often quoted oppositely by racial school integrators, to-wit: "that all MEN are created equal" has never had in the particular of said word "men" as appears in the Declaration of Independence any reference thereby to any Negro. That no member of the Negro race is included or embraced within

the word "men" found within said quoted language as having been "created equal," or otherwise. This cited decision hereunder, correctly follows the accepted rules of the construction of language, that words used should be construed as having their meaning when used, and that such meaning excludes any Negro from said word "men" as was then such intention, by the framers of the Declaration of Independence, (1). Research has not discovered any modification in this decision, in such respect, or in any change of said accepted rule of the construction of words, or language, as having the meaning as when used.

(1) Dred Scott v. Sandford, 60 U. S. 393, (409, 410 and 426).

It is respectfully said that many further federal court adjudications could now be cited, too, in the nature of judicial determinations giving, and defining, the many specific and correct reasons, and philosophies, why Negro with white integration should not be the order of the day, so to speak, but such citation and mention would only extend the length of this brief and as this Court is as well aware of all of same as we are, it is respectfully considered no sufficient purpose would be served thereby. Therefore, we turn to sociology in this connection, to-wit:

In speaking of the Negro in the United States it "has, one-tenth of its population made up of a race that, however capable it may prove itself, cannot be absorbed by amalgamation without serious danger to racial vigor." (Page 378, infra, hereunder).

With reference to racial survival, namely, of our white population in the United States as considered in connection with the amalgamation of races (of. adyisability) "becomes a serious protest at the thought of amalgamating

with lower civilizations as in the case of the Negro.—These doubts, well founded in racial intuition, are fortified by reason." (Page 449, infra, hereunder).

"It is suicidal to admit within the national borders members of alien races unless it is clear that beneficial results will follow from racial amalgamation in connection with an assimilation of civilizations. Under present conditions the racial problem within the United States is exceedingly complex and one may well despair of any immediate solution. Had telic foresight characterized our civilization throughout the Nineteenth Century we might have avoided our worst problems *by checking the importation and multiplication of the Negro.*" (Page 451, infra, hereunder).

Sociology, Its Development and Applications, (1923) by—James Quayle Dealey, Ph.D., Brown University.

In the minds of many statesmen and social students the question is rising as to why the state (in respect to social ideals of marriage) should not go back one step farther (from the child entity itself) and concern itself actively with the *heredity of the child.* Before such a program can be effective, however, the people must be educated up to the necessity of founding a family on the right biological basis. No less important is it that each individual be brought to an appreciation of the importance of considering psychological and social factors also in the choice of a mate. (Page 154, infra, hereunder).

Social relationships are acquired as a result of *habitual companionship—the process of socialization is that process whereby the many are welded together into a unity.* (Pps. 273-4, infra, hereunder).

More important (than one's physical environment as in a certain territory or climate) in conditioning the develop-

ment of society—are the other *social groups* with which an aggregate of people come into contact. (Page 290, infra, hereunder).

Social degeneration comes about by the growth of degeneracy among the individuals who make up society. Just as a diseased member of the body may eventually destroy the individual, so a diseased part of society may be the cause of the *destruction of the whole body.* (Page 500, infra, hereunder).

Outlines of Sociology, by Blackmer & Gillin.

Sociology, Thomas Jefferson, with reference to Negroes:

"Nothing is more certainly written in the book of fate than that these (Negro) people are to be free; nor is it less certain that the two races (white with Negro) *equally free* cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation, peaceably, and in such slow degree, as that the evil will wear off insensibly, and their place be, pari passu, filled up by free white laborers. If, on the contrary, *it is left to force itself on, human nature must shudder at the prospect held up.* We should in vain look for an example in the Spanish deportation, or deletion of the Moors. This precedent would fall far short of our case."

Life Writings and Opinions of Thomas Jefferson, page 164, by B. L. Rayner. Pub. N. Y. 1832. Library of Congress, Class "E" 332, Book "R 26".

Sociology, Abraham Lincoln, with reference to Negroes:

"I will say, then, that I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races, that I am not, nor

ever have been, in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, *nor to intermarry with white people*, and I will say in addition to this that there is a *physical difference between the white and black races* which I believe will forever forbid the *two races living together on terms of social and political equality*,—and inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I, as much as any other man, am in favor of having the superior position assigned to the white race."

Collected Works of Abraham Lincoln, Roy T. Basler, Rutgers University Press, 1953, pages 145-146, Vol. 3.

Abraham Lincoln, after becoming President of the United States, in his first annual message to Congress on December 3rd, 1861, in his message to Congress on March 6th, 1862, and lastly in his message to Congress on April 16th, 1862, included the subject of Negroes in the United States and in respect to them in the States and in the District of Columbia he advised and recommended as follows to-wit:

That all Negroes owned then as slaves be purchased from their owners on some mode of their valuation and to be paid for quoting "in lieu pro tanto of direct taxes, or upon some other plan to be agreed on," and that thereupon they, together with any free Negroes desiring to be included be colonized, quoting, "at some place or places in a climate congenial to them," (1), which, of course, would be Africa from whence they had been brought to the United States.

(1) Messages and Papers of the Presidents, Vol. 7, pages 3255, 3269 and 3274.

BIBLICAL SOCIOLOGY RELATED.

It is respectfully stated that irrefutable citations are above given from secular highest sources on the subject of sociology involved in this case. It is now undertaken to cite a higher source of sociology, indisputable to minds recognizing Biblical contents as the inspired word of God, with which no man may dispute or discount. These following such citations are from both the Old Testament and the New Testament of the Bible and, therefore, come from the basic authority of all believing and having faith in God regardless of race, or nationality, to-wit:

"Many have been and are being told that there is no Biblical 'support for state school segregation laws,' or 'Scriptual support for state segregation laws cannot be claimed,' (as is reported as being the words of a very long time personal friend, Brooks Hays, in his 1959 publicized address to the Southern Baptist Convention in Louisville, Kentucky) and that school integration should be favored because we are admonished, "Thou shalt love thy neighbor as thyself," Matt. 19:19, Lev. 19:18. The Bible also says, "Take ye heed every one of his neighbour, and trust ye not in any brother: for every brother will utterly supplant, and every neighbour will walk with slanders." Jer. 9:4. It instructs, "If thy brother trespass against thee, rebuke him," Luke 17:3, Matt. 18:15.

"*Who are our neighbors?* The New Testament gives the meaning and definition clearly, namely, one who shows mercy on another and who voluntarily assists another in time of distress (Luke 10:29-37), *not one demanding forced racial school integration, white or black.*

"What principles are laid down in the Bible with respect to segregation, separation of the races generally as well as

within public schools. Nations were divided in the earth after the flood, Gen. 10:32. The Lord 'scattered them (people) abroad upon the face of all the earth,' Gen. 11:8-9. He 'determined the bounds of their habitation,' Acts 17:26. The Lord separated his people from other people, Lev. 20:24, Ex. 33:16-17, I Ki. 8:53, Ps. 135:4 & Deut. 10:15. The habitation of the Negro race in Africa continued there until some of it was transported elsewhere by man, away from its natural location, which act of MAN produced the present dire problem of forced school integration in the South, and in all the United States, resulting from the violation of Divine selection and disposition of the black race in Africa, its natural place of life. *Man has always gotten into trouble when he opposed God.*

"As present federal judicial determination decreeing school integration stands upon its own selected authors of sociology, it is pertinent to examine Biblical authority on this subject. Even as to cattle and seed, such precept is "Thou shalt not let thy cattle *gender with a diverse kind*: thou shalt not sow thy field with mingled seed," Lev. 19:19. 'Thou shalt not sow thy vineyard with divers seeds: lest the fruit of thy seed which thou hast sown, and the fruit of thy vineyard, be defiled,' Deut. 22:9.

"With respect to mankind, the Most High divided to the nations their inheritance and set the boundaries of the people when He separated the sons of Adam, Deut. 32:8. Later, through Joshua, He advised that *association and intermarriage* between those of different nations can be snares, scourges and thorns in the eyes of mankind, until perishing from the good land given him by the Lord, Josh 23:3-13. With respect to such intermarriages "Neither shalt thou make marriages with them, thy daughter thou shalt not give unto his son, nor his daughter shalt thou

take unto thy son." Deut. 7:3; Ezra 9:12; Neh. 10:30. When there is such a marriage, it is part of an abomination profaning the holiness of the Lord (Mal. 2:11), because a transgression against God (Neh. 13:27) is a trespass against God. Ezra 10:2. "Keep thyself pure." I Tim. 5:22. God has likened his people to a noble vine He had planted, *wholly a right seed*, and has shown His displeasure at their *degeneration* by asking, "How then art thou turned into the degenerate plant of a strange vine unto Me?" Jer. 2:21. Jesus said that a corrupt tree does not bring forth good fruit. Mat. 7:17, Luke 6:43. The children of the same "tribe" or race *should marry each other*, so that their race's inheritance will not be removed to another. Num. 36:1-13. The teachings of St. Paul of Christianity to the Galatians advise that the Scripture teaches the principle of segregation or separation. Namely, that some are 'cast out' as an heir here on earth and others are not, and that regardless of either class, when those of both are (in a spiritual concept) 'baptised into Christ,' either they become (spiritually) 'one in Jesus Christ', leaving the remainder not so baptized cast out, segregated or separated to themselves. This is an example of the application of this principle both *physically* and *spiritually*. Gal. 4:30, 3:27-28, Gen. 21:10. Even in the end, Jesus says that He, Himself, will separate 'all Nations one from another,' (Mat. 25:32) and that every man shall be scattered to his own, John. 16:32.

"The above clearly shows, that the Bible, both the Old and New Testaments, teach physical separation of the races in or out of public schools and that one teaching otherwise is a 'false teacher' of whom St. Peter warned the people — those who would come bringing 'damnable heresies' (2 Pet. 2:1) and to whom St. Paul alludes, as to kind,

when he teaches us to 'Be not carried about with divers and strange doctrines.' Heb. 13:9."

Quoted from the book: Forced School Integration In The U. S. A. (1961). By Marvin Brooks Norfleet. Carlton Press, 84 Fifth Avenue, New York 11, N. Y.

Down to this point, it is respectfully said, it has been conclusively shown, sociologically, from both secular and religious competent sources, namely, the terrible and irrevocable detriment of Negro and white race amalgamation that will be the indisputable result of close, daily, association together of growing members of those two different races, as by their forced integration together in the public schools of Memphis, and of the United States. We think, respectfully, that it may be that the reason said Brown School Case decision completely ignores such permanent detriment to the majority white race involved is, that the burning subject of same was not raised by any party thereto. Certainly, such a pressing matter, and issue, is never to be brought out into the light of day for consideration by this Court, the opportunity for which it is respectfully urged is now respectfully presented to this Court to do, under the truth and facts related. It is respectfully asked, is there any white person who would not consider it to be a "detriment" to have a half Negro child or grandchild? For his or her white, in part, daughter or son, or grandchild, to present her or him with a half Negro lineal descendant? It is respectfully said, that those are the questions now related and involved, to be answered by this Court, in this case. It would be only one, if such a one there is of the white race, who approves of such mongrelization and could, but not understandingly, consider such racial admixture to be aught but an unnatural, ungodly, and diabolical detriment to the present majority white race, both its old, young

and all of it yet to descend therefrom. Such present and future corruption may now be prevented by only a new look at Negro with white school integration by this Court, before it is too late to head off and stop this presently proceeding influence, which if left to continue will bring about another, this nation, which then cannot ever, by any edict or means, be restored to a white integrity of person and intelligence. *This, it is respectfully stated, is the obvious and crying issue that supplicates high heaven and this Court for remedy in this case, now, at this time.*

It is respectfully now considered proper and material to point out that the Negro population of the United States appears in the total of 18,871,831, and that the total white population in the United States appears in the total of 158,881,732, at pages 251 and 256, respectively, of the World Almanac, 1962 edition. That the total of all the population of the United States appears in the grand total of 183,300,000, at page 251, of said World Almanac. That the materiality of Negro population in the North and West of the United States, with respect to the subject of this brief within cities of such areas, and regions, appears on page 251 of said World Almanac, to wit:

	Negro Population
New York City,	1,087,931
Philadelphia,	529,240
Detroit,	482,223
Chicago,	812,637
Washington, D. C.,	411,737
Los Angeles,	334,916

NEGRO INNATE PROPENSITY OF CANNABILISM.

If, perchance, it is respectfully said, there is any white person in the United States failing, for any reason, to see and consider the detriment to the majority white race ad

versely affected at Memphis, and elsewhere, in the United States by its mongrelization with the Negro race, as is above shown will be influenced and consummated by forced Negro with white student integration in public schools together, then, in the nature as of a last resort as may be needed and required to awaken such an individual to the stern realities involved by such racial integration, let's now take a calm look, and inquiry, at what said detriment truly embraces, in addition to all the other elements thereof, which may be viewed under the following quotations from the public speech made and directed to this part, which under the above cited authority is a proper subject of judicial notice, as follows, to-wit:

"When school integration has fused the Negro into our white race, it may never be recalled, can never be undone because such a mongrelized body, mind and soul may never be returned to its former condition as God made it and intended it to remain. And, as our present problem for consideration calls for some examination of the Negro with whom our white children and their descendants are designed by such racial integration to blend with and be corrupted by, I, therefore, give you now some indisputable facts, taken from world accepted authorities on the Negro. Allow me to say at this point that I have no so-called prejudice or hate toward any race; my sole position is just condemnation against bad leadership of any race including my own, which is English, Scotch and Irish. World, valued authorities, which I now cite to you by book and page number, may be read by you at any time, at the libraries which are open for all, as follows, to-wit:

"The American Negro's ancestors were captured in Central and Western Africa—The first to arrive on the mainland of North America were 'twenty Negars' brought to

Jamestown, Virginia, by a Dutch man of war in 1619. (1). Formerly, Negroes were confined to Africa, south of the Sahara desert. With the economic exploitation of the new world a vast but unknown number of them were shipped to America as slaves. Today there are two major centers of Negro population: Africa and America. (2). Cannibalism in the Negro race is not something only within the far distant past, but exists today as well as then. A Negro, wherever situated as to geography, is a Negro whether he is in Africa or in America. Just like a mule or horse here, if taken there, would be and remain a mule or horse. In this reference, as recently as in the local public press as September 29th, 1960, an Associated Press dispatch from Johannesburg, South Africa, advises us: . . . "A long time missionary to the Congo, the Rev. W. F. P. Burton, 74 years of age, says cannibalism is coming more and more into the open in the new African nations.

"With reference to very recent cannibalism in those new African nations as has been noted in the Dec. 4th, 1960 release from the Southern States Industrial Council of Nashville, Tennessee, information is given of one Negro leader: Leon M'Ba of Gabon had killed his mother-in-law and cut her up into chunks and sold her (to other Negroes) for meat for them to eat! Gabon is now a member of the U. N.!

"Said release also notes the reported incident about a Negro, M. Broka Bota, former deputy from the African Ivory Coast colony to the French Assembly at Paris. He returned to said colony, his residence, to campaign for its recently gained independence. He never returned to Paris. It is so reported that an investigation finally wormed the fact out of that tribe's chieftains that he had been eaten by his Negro constituents for the reason that they thought

by eating him they might absorb some of his qualities they admired! The Ivory Coast also is now a member of the U. N.!

"By Associated Press
"Elisabethville, Katanga.

"Two Evangelical missionaries—one a Briton and the other a New Zealander—were hacked to death by Baluba tribesmen in North Katanga last week, it was learned officially in Elisabethville today. They are Elton George Behrent Knaus, 50, of New Plymouth, New Zealand, and Edmund Hodgson, 62, of Blackpool, England.

"The missionaries are believed to have been the victims of cannibalism. UN troops searching since their disappearance have not found their bodies.

"UN troops told a reliable source that they had eye-witness account by tribesmen of how the missionaries were hacked to death by machetes. Both men had been in Katanga many years and were employed by the Congo Evangelistic Mission.

"Such has been the odious practice with Negroes in Africa for as long as we have had history to record same the most repulsive and degrading form of cannibalism is that of eating human flesh as a part, the main part, of the regular diet. The Negro tribes along the Guinea Coast southwards into the Kongo in Africa and for some distance eastward eat human flesh as food. It is treated just as other races treat animal flesh. Raids are made to capture prisoners, and they are herded and kept until wanted. Sometimes they are fattened just as other races fatten animals for the slaughter. (3). Simple food cannibalism is found in West Africa. (4). People of equitorial West Africa sold human flesh in their butcher shops." (5).

(1) Encyclopedia Britannica, Vol. 16, p. 194 (14th Ed.)
(2) Encyclopedia Africana, Vol. 20, p. 47 (1948 Ed.)
(3) Encyclopedia Americana, Vol. 5, p. 502 (1948 Ed.)
(4) Encyclopedia Britannica, Vol. 4, p. 745 (14th Ed.)
(5) Encyclopedia Social Sciences, Vol. 3, p. 172 (1930).

"Such is the kind of mixture that school integrators will despoil our descendants with, if not prevented, and by said cited respected authorities we know the innate propensities of the Negro in our midst, including that of cannibalism by the law of heredity from his ancestors in Africa, from whom he and his forebears have geographically been separated for only a short time in the history of the world, some 300 years or so. It cannot be gainsaid, that if those we have here now had remained there, they would still be, in all essentials, continuing in the practices and ways of their ancestors and their present descendants there now. Their nature remains the same, covered only by a thin veneer of their environment with our white civilization in this country. The virus of cannibalism is still within them and is ready to be further handed down to any so unfortunate to become their descendants here, most prominent of whom will be our white descendants brought about by racial integration, under the indisputable process of the operation of the well known rules and principles of sociology, if not avoided while there is yet the time and opportunity to do so."

Quoted from the public speech of December 16th, 1960, made at Jackson, Tennessee by the author of Forced School Integration In The U. S. A., (1961), pages 231-234.

It is respectfully stated that forced racial school integration may only be viewed in the light of a scheme, designed

to change man into a creature half white and black truly a step backward toward the original barbarity of the Negro race. The white man's present condition as a most important part of the whole has already been recognized by anthropologists, students of mankind. It is forecast that he and his present "civilization will come perilously near to barbarity" again in the future because of "significant alterations in man's social environments." Harry L. Shapiro, Curator of Anthropology at the American Museum of Natural History, in *The Illustrated Library of the Natural Sciences*, Vol. 3, pages 1731-2. If we put this problem to the test of pure science in the study of the future of man, we can only find that our such position is correct. If the white race's present condition is significantly altered with respect to its *social environments* specifically, through social association and intermarriage with Negroes its very civilization will be imperiled, and no peril could be more greater than its amalgamation with the Negro race.

RACIAL SCHOOL INTEGRATION SERVES COMMUNISM.

"The Daily Worker" mouth-piece of Communism in the United States on May 26th, 1928, then on its page 6, plainly states its aim now concerned, which is also that of the NAACP in the United States, which corresponding aims are, unfortunately, it is respectfully stated, are materially supported, whether intentionally or not, by the forcing of Negro and white students in public schools together, said aim of the NAACP being so well and commonly known, it is not deemed necessary to make specified citation thereof but as to the Communist Party in the United States said aim is now cited, to-wit:

"Full racial equality

"Abolition of all laws which result in segregation of Negroes.

"ABOLITION OF ALL LAWS AND PUBLIC ADMINISTRATION MEASURES WHICH PROHIBIT, OR IN PRACTICE PREVENT, NEGRO CHILDREN OR YOUTH FROM ATTENDING GENERAL PUBLIC SCHOOLS OR UNIVERSITIES."

The Daily Worker
May 26, 1928, p. 6.

It is respectfully stated that said Brown School Case decision forcing racial school integration in the United States irrefutably favors and serves such aims of both the NAACP and Communism. In such connection it may be said now, indisputably, that movant Memphis Citizens' Council, is completely dedicated by its duly adopted and published principles and by its policy, intent and purpose and exists in legal organization, quoting, "to oppose Communism" while well known leadership of the NAACP as in the instance of one of its more illustrious and famous architects and workers, Mary White Ovington, of New York, evidences NAACP advocacy of the same said principles advocated by the Communist Party as so appears in her revealing book "The Walls Came Tumbling Down," Harcourt, Brace & Company, Inc., publisher, New York, 1947, quoting, as follows, to-wit:

"We claim for ourselves every right—political, civil, and *social—we must come to treat the Negro on a plane of absolute* political and *social equality.* Out of these two statements the militant National Association for the Advancement of Colored People was born." (Page 100).

And, it is also publicly well known that W. E. B. DuBois,

blue eyed Negro (supra, pages 204 & 299) "honorary chairman" of the NAACP so-called appears to have publicly proclaimed in the National Guardian, the progressive newsweekly, 197 E. 4th St., New York 9, N. Y., in its issue of February 17th, 1958, its page 7, column 3, including; quoting, "*I seek a world where the ideals of communism will triumph . . . For this I will work as long as I live*" and it appears thereafter by the public press, Memphis Press Scimitar, in its issue of November 23rd, 1961 including, quoting, "*W. E. B. DuBois, 93 year old noted negro has joined the Communist Party just as its members are being required to register with the government. He has also been a co-founder of the NAACP and a recipient of the 1959 Soviet Lenin peace prize.*"

Under such circumstances, it is respectfully asked isn't it reasonably somewhat queer and unusual that the public at Memphis (and elsewhere of its circulation) has been advised by the public press, in published newspaper editorial comment that the NAACP is not a pro Communist organization? quoting, as follows, to wit:

> "The NAACP is not a pro-Communist organization."
> Memphis Press Scimitar, Aug. 16th, 1961.
> Its editorial, "Facts for Negroes and White to Face," its page A-6.

Racial school integration is a "pet" of Communism, because the Soviet philosophy, as is a matter of common knowledge, is to encourage anything that disrupts the peace and tranquillity in any free country, to produce trouble for its people and any dissension adversely affecting the status quo, in the belief that if there is agitated enough dissatisfaction, it might carry the people toward their aims, namely, an internatic nal conspiracy to subvert and change all nations to their state-controlled and Godless rule, desiring to impose their government on all free people

everywhere so that Moscow would be the political capitol of the world, with all bound thereto as nothing more than its economic slaves and vassals. Therefore, as Soviet leaders know the cleavage in the United States among its free people on the issue of racial school integration of the white and black races and fully realize the distress it is causing within our ranks, they encourage a continuation of insistence for school integration, knowing that if such evil plan can be made to work in the United States, its effect would be to decimate all the people for easier control by Communism. On this subject, some may be misdirected by others ensconced in a place of trust, even in the pulpit, and many listen to what comes out of the mouths of such sources, take it as true and then follow it rather than considering the subject and deciding the issue with their God given brains. This might be respectfully described, as the well known habit of many, to take what is handed out because it is too hard to think. It may not be departed, it is respectfully stated, that any entity causing the now projected white pure body of our coming future children to be born and arrive mongrelized as to race, neither white or black, a complete discord in God's plan of creation, *can be in no other such corruption to its intended integrity.* "Fie, for shame," is but an inarticulate exclamation in connection with such a process, not design.

THE MANY UNCHALLENGEABLE DREADFUL DETRIMENTS CAUSED TO WHITE STUDENTS BY THEIR FORCED INTEGRATION IN PUBLIC SCHOOLS TOGETHER WITH NEGRO STUDENTS.

The dreadful detriments accruing to white public school students now living, as well as to those yet to live and attend public schools at Memphis, and elsewhere, cannot be

more accurately described than to cite, as is a proper subject of judicial notice under authorities above given, what same are and will be as is validly documented showing Negro with white student integration at the "show place" of racial school integration, namely, in the public schools of Washington, District of Columbia, the capitol city of the United States. The following, in respect thereto, is based on the contents of the official congressional committee's "Report of the Subcommittee To Investigate Public School Standards And Conditions, And Juvenile Delinquency In The District Of Columbia, of the Committee On The District of Columbia, House Of Representatives, Eighty Fourth Congress, Second Session," Document 8554, printed by the United States Government Printing Office at Washington, 1957, for the use of the Committee on the District of Columbia, being a public document of the United States. Some of said report's contents are followingly abstracted, and quoted, having reference therein to the shown page numbers of said printed report, to wit:

1. School integration was inaugerated in the public schools at Washington, D. C., in 1954, on May 25th, only eight days after May 17th, 1954 the date of the rendition by this Court of its said decision in the Brown School Case. (Pages 1-2). It has been said that Washington was selected by school integrators as the supposed proper or favorable place to initiate the evil social experiment, we say of school integration, as a kind of "showcase" thereof. Much to the chagrin of such experimenters, instead of school integration showing any favorable results, its effects upon the student bodies, white teachers and the public school system itself became so appalling, demoralizing, intolerable and disgraceful, as appears within said official report, and it also ap-

pears therein that in advance of that investigation it had been determined to make same.

The following are a few of the contents of said official report, showing the serious detrimental effects brought about by the integration of Washington's public schools, which is now considered as a preview of such detriments reasonably to be expected at Memphis, and elsewhere, by the integration of Negro students with white students in the public schools, anywhere under the same circumstances, to wit:

1. The NAACP protested against the investigation being made, of conditions resulting from integration of Washington schools with Negro students therein with the white students. (Page 3).

2. Disciplinary problems in the integrated schools have been appalling, demoralizing, intolerable and disgraceful. (Page 24).

3. For the first time in the schools' history teachers had been required to police the corridors, playgrounds and cafeterias. Disorders in the schoolrooms have greatly reduced teaching efficiency and retarded the ability of students to learn. Police have had to be called on numerous occasions to the various integrated schools. (Page 24).

4. Since school integration, the proof showed much stealing, lying, cheating, fighting, vandalism and obscene language; "the vilest sex talk," dirty writing on the walls, foul and unspeakable language to teachers and vicious and obscene quarrels in classrooms. (Pages 24-25).

5. For the time time spoken of, the newspaper reported 7 cases of pregnancy, whereas there had been 27. (Page 26).

6. There were "boy-struck girls," disobedience of the

classrooms, failure to obey teachers and the carrying of knives. (Page 26).

7. "A Negro girl will stand in the aisle and dare a white girl to pass her." (Page 28).

8. "Prior to integration we did not have anything like the foul and obsence language we have had since the integration." (Page 28).

9. In speaking of Negro students: they show an "attitude of belligerance, sullenness, impertinence and aggression *In this third year of integration, problems are* increasing rather than lessening." (Page 29).

10. "We have degrading conduct. We did not have this prior to integration." (Page 30).

11. "We have had the problem of Negro girls going into boys' lavatory during the lunch hour; we did not have that before integration." (Page 30).

12. "Disciplinary problems have quadrupled since integration." (Page 31).

13. "In my section I have had pregnancy and relationships between boys and girls, *both Negro and white*." (Page 32).

14. The said investigating committee reported its findings, with respect to school integration at Washington, to-wit:

"Social Activity, Sex Problems and Disease."

"One of the dangerous and deplorable developments in the District of Columbia Schools is the sex attitude of the Negro, even down into the lower elementary grades. The fact that 13 little Negro girls, 6 years old and under, were

treated for gonorrhea in 1955 is only a sample of the sex attitude found in the District of Columbia.

"Teachers in the integrated schools reported deplorable conditions in sex contacts in their schools. Reports of attempted rape, assaults, chasing girls and even teachers. Negro girls soliciting boys at school, sex talk and suggestive talking and attempted *fondling of white girls*, and innumerable sex affronts were reported by the school personnel that was interviewed. Illegitimate children born to 15-year old girls increased 42% during the first year of integration over the previous year. The increase for girls under 15 years of age was 23%."

"The Department of Health reported 854 cases of gonorrhea alone among school children in 1955—97.8% were Negroes." (Page 33).

"*Virtually all social activities were abandoned after integration.* This move was initiated by the white students and *was a great loss to the school* because prior to integration they had a very happy and extensive social set up.

"There were many sex problems during the year following integration. The first evidence of this came about *when some colored boys began writing notes to white girls. The white girls complained of being touched by colored boys in a suggestive manner* when passing them in the halls.

"*One white girl left school one afternoon and was surrounded by a group of colored boys and girls. One of the colored boys put a knife at her back, marched her down an alley and backed her up against a wall. While the group debated as to whether they would make her take her clothes off*, she broke away and ran home." (Page 35).

As said report shows on its page 47, four of the six men

ber committee, including its chairman, subscribed to the following finding and recommended, to-wit:

"The evidence, taken as a whole, *points to a definite impairment of educational opportunities for members of both white and Negro races as a result of integration, with little prospect of remedy in the future. Therefore, we recommend that racially separate public schools be reestablished for the education of white and Negro pupils in the District of Columbia, and that such schools be maintained on a completely separate and equal basis.*"

It is respectfully said, that no language, or words, could show the dire detriments which will certainly arise against the majority white public school students at Memphis, or elsewhere, if or when Negro students are forced into the public schools with them, than by the explicit and clear language, or words, contained within said official report with respect to racial integration of the public schools of Washington, D. C. It does not seem, it is respectfully said, that any further comment is necessary, or required, in this particular in regard to our, so threatened, majority of white children and public school students related. *They, each and all of them, are now before this Court for protection, they as its wards and if as their guardian.*

MAY IT PLEASE THIS COURT:

Putting it in plain and unambiguous language it is most respectfully now maintained and asserted, that withholding of such prayed for protection would be tantamount to the sirring of a plow-stallion with an Arabian filly or of a noble-stallion with a dray mare—which not even a horse breeder would consider. Has the time come when the majority white children of the United States have become of less value than its horses? *This Court, it is respectfully*

said, now has the task of answering said question by its decision it will render in this case.

NOW, THAT THE CASE HAS BEEN MADE AGAINST NEGRO WITH WHITE STUDENT INTEGRATION IN PUBLIC SCHOOLS TOGETHER THE CONTRARY DECISION IN SAID BROWN SCHOOL CASE AND ITS SUPPORT ARE NOW DISCREDITED AS IS A LITIGANT'S RIGHT TO DO WITH RESPECT TO THE ADVERSARIES' CONTENTIONS IN LITIGATION.

The above premise is now adverted to, namely, that said Brown School Case decision is not sound, and although it is garbed in judicial dress it has become to many, reasonably questionable or bewilderingly and honestly considered suspect, or vulnerable, *supra*. It is the sole author of all the distress existent in its connection, and of all the present and future detriments which have arisen thereby, and will continue to arise because of it in all the years ahead to the majority white children public school students and to the overwhelming white race population of this country, the United States, if left alone as it now is to mongrelize and mix the Negro with the white people of this nation. Heretofore, it is respectfully stated, that the most vivid imagination could not have conceived of any such emergency presenting itself, whereunder it would become necessary and required to plead for the welfare and preservation of the integrity of the present and to come white citizens of the United States. That any such argument, or necessary defense, would ever become mandatory on behalf of the white unsuspecting children of this country. But, it may not be disputed, such emergency has now presented itself under the strange and frightening contents of said Brown School Case decision. Such die has been cast by that

sociological decision, destroying all then, and theretofore, opposite legal adjudication relative to the same subject, rendered earlier by this Court and other respected courts both state and federal. Comparatively, it is respectfully said, the Brown School Case decision is like the North being suddenly referred to as the South, or vice versa, because some astronomer's magnetic-needle had, alone, reversed its direction, by error, even if inadvertently or unconsciously done. Regardless of such cause, the mistake or deviation, and the penalty thereof would still exist, regardless, and does now, thereby.

It is respectfully submitted, that the said Brown School Case decision is in the nature of a revolutionary unheralded announcement that physics teaches things subject to Newton's law of gravity, when released in mid-air, fly upward rather than fall downward. Or, that water runs up a hill instead of down it to its level. That 2 times 2 equals 5, not 4. That *Black* is *White*, etc., etc. Yes, it is most respectfully said, that decision is without credibility and discredits itself because of what has been set out above and for the following reasons, with respect to which it is respectfully prayed that each be now considered with open and unprejudiced minds, to-wit:

1. The rendition of said Brown School Case sociological decision has, itself, produced the present exigency for this Court to now, in this case, adjudicate either in favor of or against the vast and overwhelming majority of white people of the United States, where on the other side the minority of Negro people are exclusively concerned under this Court's favorable, only to them, to date adjudication in said Brown School Case. It is respectfully pointed out, that this Court, unquestionably, fathered such exigency it is now confronted by.

2. It is respectfully said, that said Brown School Case decision is an apparent and obvious violation of the principles of democracy, as in the United States, wherein the plan of government is for the majority to rule, and be served.

3. It is respectfully stated, that said Brown School Case decision is incompetent in the United States because it serves only a minority, in the figurative sense that the said minority "tail wags the (white majority) dog."

4. It is respectfully said, that said Brown School Case decision is a formula for the corruption, and mongrelization, of the great white majority of people of the United States and in such stance is a real poison to degrade the responsible white people constituting the overwhelming majority and percentage of taxpayers, downward to African-white hybrids of reduced intelligence, social status, and of little support of this country's future progress, development and welfare.

5. It is respectfully stated, that said Brown School Case decision clearly ignores and violates the yet unrepealed 10th Amendment to the U. S. Constitution because the Federal Constitution withholds, and does not give or grant to the federal government any power with respect to education or schools, left thereby, as internal affairs exclusively to the several states. The amendment reading, as follows, to-wit:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Said Amendment 10 has been generally construed by this Court, as follows, to-wit:

"It is a familiar rule of construction of the Constitution

of the Union that the sovereign powers vested in the State governments by their respective constitutions, remained unaltered and unimpaired, *except so far as they were granted to the Government of the United States.* That the intention of the framers of the Constitution in this respect *might not be misunderstood*, this rule of interpretation is expressly declared in the *tenth article of the amendments.*"

Buffington (Collector) v. Day, 11 Wall. 113, 124.

Notwithstanding, it is respectfully said, that the matter of education has never been granted by the several states to the Federal Government under the Constitution, or otherwise, as is now cited, to-wit: "Education is purely a matter of state concern, and no rights, powers, or duties concerning it have been either expressly or impliedly granted the federal government with the limitations of the Tenth Amendment to the Constitution of the United States," State ex rel. Steinle v. Faust, 55 Oh. App. 370, 9 N. E. 2d 912, (914), while, nevertheless, and notwithstanding, said Brown School Case decision of this Court exists in contravention of the 10th Amendment, and the following decisions of this Court, to-wit:

This Court, in speaking by Chief-Justice Taft has held, with respect to a state operating public schools for colored and white pupils to attend separately to gain their respective educations, that such separate educational facilities, quoting, "has been many times decided to be within the power of the *state legislature* to settle without intervention of the federal courts under the Federal Constitution," including under the 14th Amendment thereto, (1). It is here noted, that state legislative enactment (2) and state constitutional provision (3), both prohibit interracial schools in Tennessee, as well as within many other states.

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(1) Gong Lum v. Rice, 275 U. S. 78, (85-87), 48 S. Ct. 91, 72 L. Ed. 172.
To same effect:
Cumming v. Richmond County Bd. of Ed., 175 U. S. 528, 545.
United States v. Buntin, 10 Fed. 730, 735;
Wong Him v. Callahan, 119 Fed. 381.

(2) Sec. 49-3701, Tennessee Code Annotated.

(3) Art. 11, Sec. 12, Constitution of Tennessee.

It is respectfully considered, that this is the point herein to make the following reference to the descriptio personae, "*supreme law of the land*," which term is in such frequently observed use, these days, by racial integrators, with respect to the contents of said Brown School Case decision. Firstly, in such connection, it is respectfully pointed out that the U. S. Constitution, our highest legal authority, gives a very different definition or meaning of said term, namely, that the U. S. Constitution, and the laws of the United States which shall be made in pursuance thereof, (enacted by Congress, under Sec. 1 of Art. 1 of the U. S. Constitution), shall be the "supreme law of the land," 2nd par., of Art. 6 of the U. S. Constitution, which exclusive definition of said term is this Court's adjudged definition thereof also, includingly by its decision in the case of State of Florida v. Mellon, 273 U. S. 12 (17), 47 S. Ct. 265, 71 L. Ed. 511, holding—that it is law of the United States, passed by Congress pursuant to its Constitution, that is the "supreme law of the land." We, therefore, very respectfully say, that if the contents of said Brown School Case decision is to be viewed as "law" that it is unconstitutional, and void, of no legal effect. And, in such aspect, would be unconstitutional as "law" of any kind, because promulgated by the

judiciary instead of the legislative department of the Federal Government. It is the duty of the courts only to judge, Chisholm v. Georgia, (U. S.) 2 Dall. 419, 433, it being axiomatic that courts have no power to *legislate*, and in this connection it may be respectfully stated that this Court has affirmed the holding, namely, that it is not the province of the judiciary "to attempt to inaugurate great *social* (or political) *reforms*," 12 C. J. (Const. Law) Sec. 387, page 884, note 6 citing, Matter of Bradwell, 55 Ill. 535, (aff. 16 Wall. (U. S.) 130, 21 L. Ed. 442), into which category of reforms we respectfully say the said decision in the said Brown-School Case indisputably falls, and for such reason, also, is proscribed.

Under such circumstances, and judicial determinations, it is respectfully said that said Brown School Case decision violates the time honored adjudications, which when examined, show its invalidity, some of which are now given, to-wit:

"The Federal government derives its authority wholly from powers delegated to it by the Federal Constitution, (1). The reserved powers of the states and of the people were emphasized in the Tenth Amendment to the U. S. Constitution, namely; 'The powers not delegated to the United States by the U. S. Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people," (2). The Federal government is one of enumerated powers, those not delegated to the United States by the U. S. Constitution nor prohibited by it to the states, are reserved to the states or to the people. The U. S. Constitution is not a statute, but the supreme law of the land, and the powers conferred upon the Federal government are to be reasonably and fairly construed, with a view to effecting their purposes. But recognition of this

principle cannot justify attempted exercise of a power clearly beyond the true purpose of the grant, (3). *Internal affairs* of states are reserved to states not having been granted by the U. S. Constitution to the Federal government for any supervision by it, (4). With reference to the 10th Amendment, the holding of the Supreme Court has been: "This Amendment—disclosed the widespread fear that the national government might, *under the pressure of a supposed general welfare*, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, *and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for, amending the U. S. Constitution*, (5)."

(1) Graves v. People, etc., 306 U. S. 466, 59 S. Ct. 595, (596), 83 L. Ed. 927.

(2) Bute v. People of State of Illinois, 333 U. S. 640, 68 S. Ct. 763, (769), 92 L. Ed. 986.

(3) Railroad Retirement Board v. Alton Ry. Co., 295 U. S. 330, 55 S. Ct. 758, (761), 79 L. Ed. 1468.

(4) Bartemeyer v. Iowa, (U. S.) 18 Wall. 129.

(5) Kansas v. Colorado, 206 U. S. 46, (90).

Forced School Integration In The U. S. A. (1961), supra, pages 154-155.

In conclusion, with reference to the 10th Amendment to the U. S. Constitution, it is to be remembered that it (together with the preceding Amendments 1-9) were not declared to be in force until December 15th, 1791, whereas the U. S. Constitution, itself, had been duly signed on September 17th, 1787, thereafter being resolved into opera-

tion by the Continental Congress on September 13th, 1788. Before either of said dates, and happenings, architects of the U. S. Constitution considered its adoption would leave internal affairs of the states intact, free from federal jurisdiction. As above stated, the Federal Constitution does not contain any reference to the subject of schools or education. The intended result of such absence therefrom is defined in "The Federalist" in its fourteenth essay of November 30th, 1787, authored by James Madison (1751-1836) member of the Constitutional Convention at Philadelphia and called "the master builder of the Constitution," thereafter becoming president. He wrote in the eighth paragraph of that essay seeking ratification of the Constitution by the several states that "the general government (federal government) is not to be charged with the whole power of making and administering laws. Its jurisdiction is LIMITED TO CERTAIN ENUMERATED OBJECTS—subordinate (state) governments can extend their care to ALL THOSE OTHER OBJECTS which can be separately provided for, WILL RETAIN THEIR DUE AUTHORITY AND ACTIVITY." It was then, later, to additionally impress such intent forever in the Constitution itself, its said Amendment 10 was duly adopted. It is earnestly submitted, that all of same is historical fact, not subject to question of any kind from any source.

6. It is respectfully stated that the racial descent effect of said Brown School Case decision is a crime against God's plan of creation, human succession and of nature, because of its baleful influence and power to change and corrupt the integrity of the majority white race's descendants and progeny in the United States. In such aspect, the decision is miscegenation, itself.

7. It is respectfully said that said Brown School Case

sociological decision is in direct conflict with and violates the prior adjudged principle by this Court, that it cannot make such decision, to-wit:

"It is not within our competence to confirm or deny claims of social scientists as to the dependence of the individual on the position of his racial or religious group in the community."

Beauharnais v. Illinois (1952), 343 U. S. 250, (263).

Note: Said Brown School Case decision contrary to the holding in said Beauharnais v. Illinois Case was very shortly thereafter rendered by this Court, on May 17th, 1954, no mention in the latter of the former. As the status related now is, it is respectfully submitted, the later said Brown School Case decision is in direct conflict with the only slightly earlier Beauharnais v. Illinois Case decision as is above quoted from, because said later decision is—a *sociological one*, based on the claims of social scientists named, and cited therein at its annotation 11, at the bottom of its page 494.

With respect to said Brown School Case decision, the Honorable James F. Byrnes, former Associate Justice of this Court is reported to have said, in the Congressional Record, May 24th, 1956, including the following, to-wit:

"We can only speculate as to how the Court reached its decision. In that speculation, it is interesting to read in the 'Harvard Law Review' of November, 1955, an article entitled, 'The Original Understanding and the Segregation Decision,' written by Alexander M. Bickel, who, according to the 'Review,' was the law clerk to Mr. Justice Frankfurter during the October term, 1952, when the case was first argued. After a lengthy resume of the evidence, the writer states:

The obvious conclusion to which the evidence, thus summarized, easily leads is that Section 1 of the Fourteenth Amendment, like Section 1 of the Civil Rights Act of 1866, carried out the relatively narrow objectives of the moderates, and hence, as originally understood, was meant to apply neither to jury service, nor suffrage, *nor anti-miscegenation statutes, nor segregation.* This conclusion is supported by the blunt expression of disappointment to which Thaddeus Stevens gave vent in the House."

And later as so reported, that Judge Byrnes said, "*The Court not only ignored the Constitution and its own decisions, but, in establishing a policy for schools, ignored the record in the case*," in speaking of the contents of said Brown School Case decision.

8. It is now respectfully submitted that said Brown School Case decision is erroneous because it is, when reasonably considered, obviously shows it bottomed and standing for its support on the "equalitarian dogma," to-wit: *that except for environmental differences, all races are potentially equal in ability and differ only in their opportunity to achieve*, as so defined by Henry E. Garrett, Ph.D., nationally known psychologist, formerly the head of the department of psychology at Columbia University in New York, and a past president of the American Psychological Association, in his article on the question of equality of the races appearing in the summer, 1961, issue of the quarterly publication "Perspectives In Biology and Medicine," published by the University of Chicago Press, Chicago, Illinois.

Dr. Garrett's said article is hereby cited in full for respectfully asked judicial notice by this Court, which erudite composition, facts and observations therein are deemed to emasculate the "equalitarian dogma," which he refers

to that the allegedly scientific groups claim they have "proved!" To the religious groups who accept such proof and, thereon, assert the belief in racial differences implies "superiority" and "inferiority" and is unchristian, shameful and blameworthy. That each camp supplements the other, the social scientists turning to moral denunciation when their evidence is feeble, and the religions fall back on "science" to bolster up their ethical preachments. That from both sources, the American people for more than 30 years have been barraged by such propaganda unrivaled in its intensity and self righteousness. That the installation of such dogma has reached the stage that it is not to be questioned without penalty to young scientists believing otherwise whose careers would be jeopardized if challenging it, and are threatened to be silenced otherwise. He calls attention to the many college students who have been indoctrinated by this dogma, and parrot it without competent familiarity with the evidence. He points out, with respect to the public indoctrination of the equalitarian dogma that it comes thereto by the Northern press, magazines, radio and TV, all confidently proclaiming equalitarianism. He logically gives the sources accounting for the shift from the general belief in native racial differences to wide spread erroneous acceptance of the dogma.

He names the most potent source of the equalitarian dogma, to be Franz Boas, who came to the United States from Germany in 1866, and taught for years the subject of anthropology at Columbia University, 1899-1936. That he, and his followers, have discounted any evidence tending to show that "Negro-white" differences may NOT be environmentally determined. That such conclusions, though confidently announced, are often only subjective and unconvincing. Dr. Garrett teaches that "psychological tests" are

the best, for determining racial differences. (Note: it is irrefutable that the mind of man dictates his life, actions and destiny. It is submitted, that Dr. Garrett is correct in his said teaching, that the kind of mentality one has must be looked at to determine the related differences, man as to man and race as to race. That the same is true in the animal kingdom, some being more intelligent than others, i. e., the horse or dog as distinguished from the laughing-hyena or wild-cat.). His comparisons, psychologically, as between the Negro and the white man, on exhaustive mental tests of both as noted by him in his said article are highly illuminating with respect to the I.Q.'s of the average Negro and the average white person, made on subjects of diverse kinds, including, preschool children, grade and high school pupils, college students, gifted and retarded children, soldiers, delinquents, racial hybrids, and Negro migrants. The reported results show a high percentage of such points in favor of whites, and in conclusion thereon he states "it seems clear that the evidence from psychometrics, intelligence testing, does not favor the equalitarian dogma; in fact, just the opposite." And, he concludes such part by stating, "*At worst, the equalitarian dogma is the scientific hoax of the century.*"

It appears true and correct, it is respectfully said, that said Brown School Case decision rendered by this Court is based, in principal part, on said "equalitarian dogma," because on the bottom of its page 494 the Court at its annotation 11 cited as authority therefor, quoting, "And see generally Myrdal, An American Dilemma." Said author being Gunnar Myrdal. Myrdal, in turn, himself, in his said book "An American Dilemma" bases it on said anthropologist, Franz Boas, referred to by Myrdal as an anthropologist who had already come out against arguments "for ra-

cial differences," in respect to radically different "environmentalist sociology," its pages 90-91. Therefore, so following, teaches himself that "environment" has been made "supreme" and on such premise he says that the equalitarian doctrine as to mankind, is his espoused subject, pages 83-84. Myrdal's theories and teachings in his said book includes the following, which it is most respectfully asserted in view of the logical and valid thesis of Dr. Garrett, aforesaid, is not even good nonsense, to-wits that in the study of mankind it should be "freed from the traditional discussion of racial traits" and in such place "rather look on environmental factors and their efforts as the main objects for study," in which connection Myrdal says that with respect to "differences in performance on intelligence and personality tests can no longer be answered by conceiving of certain inherited traits as constituting independent variables which can be thought of as isolated," pages 151-152. Thus, in an instant, with his writing, *he undertakes to do away with, or conceal, the indispatable principle of heredity, Racial heredity.* We earnestly submit, such discourse is preposterous. Myrdal does not have the power to destroy the common knowledge process that *"like begets like."* His premise is biologically untenable and absurd.

It might be material here, to respectfully say, that said Myrdal and the other named persons at said annotation 11, K. B. Clark, Witmer and Kotinsky; Deutscher and Chein, Chein, Brameld and Frazier, do not appear of such significance in their fields of endeavor to even appear in any biographical reference in the following three outstanding considered world authorities, namely, The World Book, Encyclopedia Americana, or Encyclopedia Britannica, in their respective 1956 and 1961 editions.

As said persons, cited with evident approval by this Court in its rendition of the said Brown School Case decision at said annotation 11 on its page 494, we respectfully quote again from former Associate Justice Byrnes, within the Congressional Record, May 24th, 1956 in their connection, to-wit:

"Counsel had no opportunity to cross-examine these psychologists as to their qualifications. However, in the United States Senate on May 26, 1955, Senator Eastland, chairman of the Senate Judiciary Committee, submitted an amazing record of several of the authorities cited by the Court. He said: 'Then, too, we find cited by the Court as another modern authority on psychology to override our Constitution, one Theodore Brameld, regarding whom the files of the Committee on Un-American Activities of the United States House of Representatives are replete with citations and information. He is cited as having been a member of no less than 10 organizations declared to be communistic, communistic-front, or Communist dominated.'

"As to E. Franklin Frazier, another authority cited by the Supreme Court, Senator Eastland said, 'The files of the Committee on Un-American Activities of the United States House of Representatives contain 18 citations of Frazier's connections with Communist causes in the United States.

"In support of its findings, the Court said, "See generally Myrdal, 'An American Dilemma, 1944' I have seen it. On page 13, Professor (Gunnar Karl) Myrdal writes that the Constitution of the United States is 'impractical and unsuited to modern conditions' and its adoption was 'nearly a plot against the common people.'—

"Senator Eastland also listed some of those who were associated with Myrdal in writing his book. He stated

that the files of the House Committee on Un-American Activities show that many of Myrdal's associates are members of organizations cited as subversive by the Department of Justice under Democratic and Republican Administrations.

"I am informed by the Senator that no member of the Senate and no responsible person outside of the Senate has challenged the accuracy of his statements on this subject."—

And, "loyal Americans should stop and think when the executive branch of the Federal Government brands as subversive organizations whose membership includes certain psychologists, and the Supreme Court cites those psychologists as authority for invalidating the constitutions of 17 states of the union."

And, "some advocates of integrated schools shudder to think of anyone's criticizing a decision of the Supreme Court or, certainly, this decision of the Court. Well, whenever a member of the Court dissents from the majority opinion, he expresses his views and criticizes—sometimes in vigorous language—the Court's opinion.—

"The decisions of the Supreme Court must be accepted by the courts of the United States and the States, but not necessarily by the court of public opinion. The people are not the creatures of the Court. The Court is the creature of the people."

For another complete emasculation and expurgation of the "equalitarian dogma" or doctrine, this Court's attention is respectfully called to, and asked to notice judicially, the learned composition on the printed pages of the book, "Race and Reason, A Yankee View" by Carleton Putnam, published by the Public affairs Press, Washington, D. C., in

1961. It is of the highest caliber and has an introduction on its pages VII-VIII by R. Ruggles Gates, M.A., Ph.D., D.Sc., LL.D., F.R.S., said Henry E. Garrett, Ph.D., D.Sc., R. Gayre of Gayre, M.A., D.Phil., D.Pol.Sc., D.Sc. and Wesley C. George, M.A., Ph.D. Its Library of Congress Catalog Card is No. 61-8447.

It is respectfully stated, that the time has passed for any indoctrination of the spurious "equalitarian dogma" or doctrine to remain effective longer. And, without it, there are no legs for said Brown School Case decision to further or longer stand on.

9. It is respectfully stated that in addition to the "equalitarian dogma" or doctrine not being a valid support for said Brown School Case decision in an I.Q. (intelligence) aspect as is above shown, that dogma or doctrine is also shown by the following highly competent evidence to be equally deficient in such support with respect to the Negro, physically, in comparison with members of the white race. This, may be respectfully pointed out with respect to blood which is perhaps the most important physical element in both Negro, and white bodies by the following quotation, to-wit:

"You will recall how doctors disbelieved there were germs or that sterilization of surgical instruments killed them. The record of such instances is extensive. All present physicians are fully aware of it, as well as students of the past. (Note: it is a matter of historical knowledge that it took about 100 years for the medical world to approve and heed the teaching of the great bacteriologist, Louis Pasteur (1822-1895), member of the French Academy, that surgical instruments should be sterilized against germs before contact with human bodies). A physician now would not even remove a splinter without first sterilizing his instrument!

"The truth of this blood difference (of the Negro and white people) is finally being recognized in medicine, although there are still those who resist the idea, (just as in said Pasteur instance). An outstanding example of this recently occurred in the United States—I refer to a scholarly paper on this aspect of blood by Dr. John Scudder, a professor at Columbia University College of Physicians & Surgeons. He submitted his paper in Chicago at a meeting of the American Association of Blood Banks in November, 1959, according to the Commercial Appeal, Memphis, Tennessee, of November 12th, 1959.

"The newspaper account stated that the hospital affiliated with Columbia University does not now even use the system of racially grouped blood for transfusions. It also states that Dr. Scudder's inquiry into this subject to determine the truth with respect to such physical differences resulted in his recommendation that the hospital establish the 'giving of blood transfusions according to race.' The hospital stated, 'Dr. Scudder presented statistics in support of a relationship between sensitization and interracial transfusions. His views, of course, command earnest, deliberate consideration.—Dr. Scubber maintained such cases (developing a harmful reaction in instances) would be less likely if transfusions came from a member of the patient's own race. That inter-racial blood transfusions are 13 1/2 times more hazardous to the patient. See 'Safer Transfusions Through Appreciation of Variants In Blood Group Antigens In Negro and White Blood Donors' by John Scudder, M.D., D.Med.Sc., in Journal of the National Medical Association, March, 1960, Vol. 52, No. 2.

"Dr. Scudder advised in a letter to me dated November 16, 1959: 'I am trying to see whether there is a suitable means of meeting the large volume of requests for the text

(of his paper). He enclosed the bibliography in connection with his studies, listing fifteen books by as many authors. *So, on this too, the light of day is dawning*, and on the basis of the self-evident truth of Dr. Scudder's position, from his study, research, experience and the basic authorities he cites for support, disbelievers will, no doubt, have to come to terms with the truth"—in respect to the physical difference of the blood of the Negro and white races.

Forced School Integration In the U. S. A., (1961), pages 106-107.

Furthermore:

Sickle cell anemia—" A disease marked by anemia and by ulcers and characterized by the red blood cells of the patient acquiring a sickle-like or crescentic shape in vitro. The disease seems CONFINED *to the Negro race and it is hereditary.*"

The American Illustrated Medical Dictionary, By Dorland, 23rd Ed., 1957, page 80.

"Sickle cell anemia—*That affecting Negroes* and dark skinned individuals, usually hereditary. It is characterized by the crescentic form assumed by the erythrecytes after their removal from the circulation."

Blakiston's New Gould Medical Dictionary. Page 72, 2nd Ed., 1956.

Sickle cell anemia: "*hereditary and familial hemolytic a., peculiar to Negroes* characterized by elongated and curved, crescent-shaped or sickle-shaped erytrocytes, *evidence of abnormal destruction of blood*, and active hemopoiesis."

Stedman's Medical Dictionary, 20th Ed., 1961, page 97.

"Dr. Cyrup C. Sturgis, Chairman of the Department of Internal Medicine, University of Michigan Medical School writes: 'This type of blood disease is *limited almost entirely to persons of the Negro race or those with an admixture of Negro blood.*"

"Through his research on this issue, Dr. M. A. Ogden has become quite alarmed over the seriousness of this *hereditary Negro blood disease* AND THE EFFECTS INTER-MARRIAGE BETWEEN NEGROES HAVING THE DISEASE EITHER IN ITS ACTIVE OR INACTIVE FORM WITH WHITES WOULD HAVE ON FUTURE GENERATIONS."

Quoted from bulletin of
"Better Health."

A very impressive list of physical characteristics which have been compiled, none of which apply to the white man but do to the Negro race is now quoted, to-wit:

"The Negro:

(1) Hair felts like wool, not true human hair.
(2) Ape groove in skull.
(3) Mellon shaped head.
(4) Small brain, 35 ounces.
(5) Everted lips.
(6) Animal smell.
(7) Pelvis slants forward.
(8) Color black.
(9) Short ape thumb.
(10) Big hand.
(11) Round shin bone.
(12) Small high calf.
(13) Thick weak lower limbs.

(14) Long arms.

(15) Protruding heel bone.

(16) Very large feet.

(17) Flat wide nose.

(18) Thick skull closes early, prevents brain from developing."

Said list points out that said listed physical traits, are found to be common in both Negro and the ape.

Cited from, the newspaper:
The Thunderbolt, (nationally distributed).
Birmingham, Alabama
Issue No. 32, July, 1961.

It is now respectfully pointed out that intelligent people of the United States, and elsewhere, correctly know it is false that all men are equal, environment or else considered. A vivid instance of such proof is a very recently reported statement to such effect by one of our English cousins, of the highest attainment and of world reputation and recognition, that of Field Marshal Viscount Montgomery, on May 14th, 1962, made at London in the House of Lords by him incidental to his opposition to proposed legislation which if enacted (but which was rejected by a 41 to 21 vote in said body) would have outlawed racial discrimination in British hotels and boarding houses, quoting, to-wit:

"*People of different colors* cannot be converted into a *homogeneous whole by acts of parliament nor by the exhortations of idealists. The hard fact is that all men are not equal.*"

United Press International Dispatch.
Headed London. In Memphis Press Scimitar, its issue of May 15th, 1962.

10. It is respectfully said that a widely advertised instance with national publicity given thereto effort, by the NAACP agents and counsel seeking the kind of decision rendered in said Brown School Case appears to cast a shadow upon its contemporary circumstances. The same, as was covered by an article in the U. S. News & World Report, on its pages 86-88, of its issue of February 5th, 1962, shown as being by Dr. Alfred H. Kelly, professor of history, Wayne State University of Detroit, Michigan.

Said article represents itself to be "an inside story" with respect to the time before and incidental to the rendition of said Brown School Case decision.

Professor Kelly appears therein to have been called in to work in the effort to produce such a decision by Thurgood Marshall, then general counsel of the NAACP, by Kelly's research and report on the question of the intent of those who prepared or framed the contents of the presently called 14th Amendment to the U. S. Constitution, with particular reference to such intent, if any, with regard to the subject of racial segregation in public schools. It was desired, if it were possible, to destroy the concept of the long time adjudged and followed Plessy v. Ferguson Case decision holding by analogy that "separate but equal" facilities in public schools satisfied the provisions of the 14th Amendment. Said Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256.

Said Dr. Kelly's article shows at the bottom of its page 88 as cited, that its contents are from his address, public speech, he made on December 28th, 1961, before the annual meeting of the American Historical Association, at Washington, D. C., and consequently it is respectfully pointed out that, therefore, because being contents of such speech, it is subject to judicial notice on such account, as well be

cause being part and parcel of the subject of sociology related herein, in connection with the sociological decision rendered by this Court in said Brown School Case.

Dr. Kelly, evidently not a lawyer and aware of amenities of the legal profession, in the aspect of lawyer to Court, appears to speak as if he knew several of this Court's minds, namely, that some members disapproved of "Court-made fiat" but, nevertheless, *that this Court desired to "dispose" finally with its former said holding in the Plessy v. Ferguson Case! under a new and opposite interpretation of the 14th Amendment* but that consideration of such action, was distressing to contemplate because of the "apparent historical absurdity" to so adjudicate! and if so doing this Court would be "embarrassed" by criticism that it had *legislated* to such effect! We respectfully say, that our long practice of the law has not yet acquainted us with any lawyer who has undertaken to so speak, the minds and intentions of any Court before which any litigation had pended, or pends. But this initial, to us, such instance clearly appears by the NAACP's said agent historian from his own reported words.

Dr. Kelly proceeds even further, in representing this Court, to-wit: that in its consideration of said Brown School Case then, toward determination, that this Court was calling on "learned counsel" of the NAACP, et al, to bring forth before it in said case a "*plausible historical argument*" that would vindicate a decision therein proscribing and destroying state laws requiring separate public schools for Negroes and whites, under, if possible, the provisions of the 14th Amendment which had always been construed otherwise by this Court, for some sixty years, to then. Even if such proscription and destruction had to be promulgated by this Court, "*by judicial fiat.*"

Kelly further advises, that the NAACP's such effort by himself and others so engaged therefor, in the preparation of its brief favoring public school desegregation in said Brown School Case was done and performed with the knowledge, and in the face of history showing that the Civil Rights' Act of 1866 had been redrafted before enactment so Congress would not thereby subject itself to embarrassment, namely, that the act, when passed, embraced attack against "State segregation laws, including those requiring school integration!" That in such effort, it would not be safe to expose specifics of related history on the subject with respect to the framers of the 14th Amendment because the NAACP's position in the then undecided said Brown School Case "might best be cast in very generalized terms, *with a deliberate avoidance of the particular.*" Said word "avoidance" amounting by such process to "concealment," we respectfully say. And, it is learned from said article, that such was the character of the NAACP brief before this Court, in said Brown School Case, and as used by said Thurgood Marshall in his oral argument before this Court in that case.

Dr. Kelly further tells all, that the decision in said Brown School Case followed by its holding the 14th Amendment ruled out, as unconstitutional thereunder, state laws providing school segregation, "junking" all federal decisions to the contrary on "straight-out sociological grounds" considering only the Negro race so involved. That type of decision being made because research of related history "resulted in a general inability on the part of the NAACP to make a plausible case—shown, in short, *that the Fourteenth Amendment clearly and obviously had not been intended to touch segregation.*" He calls the decision a "draw" one, stating the Supreme Court could have op

positely decided the case "to discard segregation under the (14th) Amendment, at least for a time."

Dr. Kelly's indictment speaks for itself. Let it now be seriously and earnestly observed, that the obvious "Cheshire cat grin" look of his countenance in his photograph appearing on the first page of said article, seems to disclose his exuberance, exhilaration and self-praise for his said efforts as if being intended as saying, "to hell" so to speak, "with the millions of people in this country adversely affected thereby!"

11. It is most respectfully stated, that there must be something gravely wrong or erroneous with respect to said Brown School Case decision, as it has caused as is common knowledge of the widest publicity and attention throughout the United States, for the association of the Chief Justices of the Supreme Courts of the several states to take notice thereof, and resolve thereupon, at the meeting of forty-four of them held at Pasadena, California, on August 23rd, 1958, and upon the vote taken on this subject they stood 36 against the rationale and character of said Brown School Case decision, to only 8 favoring such judicial decisions.

It is respectfully said that the report adopted by Chief Justices of 36 of our states was and is critical of this Court, declaring it has tended to adopt the role of policy-maker without proper judicial restraint; that this Court has abused the Constitution with reference to States' Rights, concerning the internal order and prosperity of the several states; that decisions of this Court show, collectively, a continuing and accelerating trend toward increasing power of the national government, contracting power of the state governments, exercised, by this Court, under its views of the 14th Amendment to the U. S. Constitution; that this Court, in cases arising under the 14th Amendment, has assumed

what seems primarily *legislative power*. The report points out that if is strange that this Court should obtain immense, and in many respects, dominant power which it now wields. Etc., Etc.

We most respectfully say, that this is the first of this kind of criticism, from such a high and lofty source, of this Court in the history of the United States. The report points out the difference of having a government by men, not of law. It is most respectfully stated, on such premise, that any type of totalitarian government would not be popular in this country, the United States.

FINAL STATEMENT

It is respectfully submitted that competent, relevant and material composition and citations above referred to and given show that the irrefutable detriments to the majority white minor children public school students at Memphis, and elsewhere so affected, now threatens them and their descendants by forced school racial integration of Negro students with white students therein, together, in their coming daily lives, may only be avoided and stopped by such demanded and called for reexamination of the judicial fiat, said Brown School Case decision, and of its withdrawal or relaxation by this Court in its status as guardian of the penalized majority related, toward such end and benefit; that it will be by such considerate adjudication by this Court only, that mongrelization of very substantial numbers of the white race with the Negro race, in ever increasing extent until the very integrity of the white race in the United States may reasonably be foretold now, will be corrupted and destroyed as the result of said Brown School Case decision if it is left by this Court to stand as it now is. The hands of countless living white children and millions of them yet unborn, are now extended to this Court, praying

relief, which this Court may only grant to them by freeing them from the coercion of said decision, which now damns their future if its detriments to each, and all of them in one or more material aspects as are above described, are not ended by this Court now, timely, before such mongrelization may not be undone and, otherwise, before each begins to serve the sentence imposed by this Court's said decision. It is respectfully stated, that the vast majority related are entitled to the relief, in such particular, which it is within the power and discretion of this Court, to award them.

It is respectfully said that the hands of millions of the fathers and mothers of the white race constituting, with their white children, the great majority of the population of the United States, are likewise extended in supplication to this Court, on behalf of their sons and daughters and on their own behalves as their parents now having just apprehension and fear with respect to the future of their progeny, and descendants, by reason of said Brown School Case decision as it now exists. It is respectfully stated, that this vast majority of white people, parents and children, are entitled to relief, in such particular, which is also within the power and discretion of this Court, to grant.

It is respectfully said that any refusal by this Court to grant said relief would be tantamount to its erroneous favorable decision with respect to the substantial minority related, the Negroes in the United States, against the majority white race therein, which it is respectfully said is the indisputable situation which now exists by and under said Brown School Case decision, such exigency having been created thereby, which will continue unless this Court reconsiders its said determination and thereupon modifies it, materially, to what it now does and imposes against the

overwhelming majority white race population, and tax payers, of this country the United States.

It is respectfully said with reference to the contents above of this brief and argument, that it is considered they modestly follow in the foot steps of Nehemiah in his Biblical address "unto the *nobles*, and to the *rulers*, and to the rest of the *people*, be not ye afraid of them: remember the Lord, which is great and terrible, and *fight for your brethren, your sons, and your daughters, your wives, and your houses*" (Neh. 4:14) against their enemies, viz. any who would now *corrupt, nonracelize and destroy them* as made by God in his image, after His likeness, Gen. 1:26-27. *Man, in his body, is the temple* "of the Holy Ghost" (1 Cor. 6:19) and is *"the temple of the living God"* (II Cor. 6:16, I Cor. 3:17) and we, all, have it clearly stated in Scripture, *"if any man defile the temple of God, him shall God destroy."* I Cor. 3:17.

It is respectfully submitted, in view of the verities involved, that one or the other of the following made prayers to this Court should be granted by it in this cause, because, importantly, the said Brown School Case decision, a sociological decree, under the immutable principles and processes of sociology forces present and everlasting future such detriments on and to the majority white race of the United States that such effects will be perpetuated, and may never be recalled, to the eternal detriment of our country, the United States, in all time ahead.

PRAYERS

WHEREFORE, IT IS RESPECTFULLY PRAYED, (1) that said Brown School Case decision be overruled, vacated and set aside; (2) that the decision rendered in this cause by the Sixth U. S. Circuit Court of Appeals be re-

versed, and that this cause be duly remanded to such effect with respect to the public school system at Memphis, Tennessee, and elsewhere under the same attendant circumstances; or (3) that this cause be remanded allowing the public school authorities at Memphis to operate its public schools with separate but equal facilities with respect to the white and Negro students attending same because of the great number of Negro students related, being about 44 per cent of the total of all students in the public school system at Memphis, in the nature as was recommended to be done under similar circumstances at Washington, D. C., by four of the six members of the House Congressional SubCommittee officially reporting to such effect; as is above referred to; and (4) prayer is respectfully made now for all general relief consonant with the character of same as appears immediately above herein mentioned and referred to.

Respectfully submitted,

BRUCE LAW.

RICHARD T. ELY.

(Marvin Brooks Northcutt)

Attorneys for Memphis Citizens' Council, a Corporation, of Memphis, Shelby County, Tennessee.

See:
Addenda, next page.

ADDENDA.

By this very brief addenda, now included after preparation and handing copy of the above to the printer to complete, it is respectfully said that movant, Memphis Citizens' Council, has had the very late opportunity to see and read the petition for certiorari herein and to be astounded to observe therein the following representation to this Court, to-wit:

"We (petitioners) *know* that *it* (petitioners' suggested plan for racial integration of the public schools of Memphis) *has been accepted* as a workable plan *by every element of the community*" (page 18).

It is hereby respectfully stated, that said representation is not true with respect to the very substantial number of white membership of movant and in its considered opinion, now expressed, of the most part of the white majority of the people of Memphis.

This addenda is respectfully added to challenge said representation of petitioners, for the information of this Court in this certiorari proceeding, and as an indisputable example of movant's support of its principles and purposes opposing race-mixing as in the public schools at Memphis it is here respectfully said that movant's said principles and purposes have recently been adopted by and are now the principles and purposes of the sixty (60) odd civic clubs of Memphis and Shelby County, Tennessee, which represent from 40,000 to 45,000 of white citizens resident therein, as well as countless others of both the white and Negro residents of the same locality.

The Memphis Citizens' Council respectfully states, that it is its considered opinion that the overwhelming majority of all people of Memphis and Shelby County, Tennessee, are seriously and irrevocably opposed to Negro with white student racial integration of their public schools, which they support and pay for by their school taxes so used, collected from them therefor.

Respectfully submitted,

BRUCE LAW.

RICHARD T. ELY.

MARVIN BROOKS NORFLEET.
Attorneys for Movant, Memphis Citizens' Council.